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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

3 UNITED STATES OF AMERICA,

4 v.

05 CR 1067 (KMK)

5 NATHANIEL ALEXANDER,

6 Defendant.

7 -----x
8 New York, N.Y.
9 July 11, 2006
10 10:35 a.m.

10 Before:

11 HON. KENNETH M. KARAS

12 District Judge

14 APPEARANCES

15 MICHAEL J. GARCIA
16 United States Attorney for the
17 Southern District of New York
18 DANYA PERRY
19 LYNN A. NEILS
20 Assistant United States Attorneys21 MICHAEL FINEMAN
22 Attorney for Defendant

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1 (Case called)

2 MS. PERRY: Before we begin, two housekeeping matters.

3 For purposes of this motion, my supervisor Lynn Neils
4 is also sitting at counsel table.

5 THE COURT: Good morning, Ms. Neils.

6 MS. NEILS: Good morning.

7 MS. PERRY: I also have a personal matter to take up
8 at sidebar with Mr. Fineman, if that is appropriate.

9 THE COURT: Sure.

10 (Sidebar discussion off the record)

11 THE COURT: Counsel came up to the sidebar to discuss
12 a matter. Mr. Fineman was there and Ms. Perry and the Court,
13 and the Court has no problem with what was said off the record.14 With respect to your motion, Mr. Fineman, I will note
15 that Mr. Fineman and his client are here as well.16 With respect to the Miranda issue, the government
17 obviously agrees that there is a need for a hearing.18 I don't know, are counsel prepared to go forward on
19 the Miranda portion of this?

20 MS. PERRY: Absolutely.

21 THE COURT: Mr. Fineman, are you prepared to go
22 forward?

23 MR. FINEMAN: Absolutely.

24 THE COURT: With respect to the other component of Mr.
25 Fineman's motion, Mr. Fineman, what is your view on a hearing

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1 with respect to the other component of your motion?

2 MR. FINEMAN: With respect to the motion for a
3 dismissal as a result of prosecutorial misconduct, I don't
4 think that a hearing would be necessary and appropriate in the
5 event that the Court ordered the government to turn over the
6 grand jury transcripts, and I would have access to those
7 transcripts and the witnesses that testified at grand jury as
8 to the quality and quantity of their evidence at the time of
9 the first indictment.

10 THE COURT: But there are other aspects to your motion
11 that go to Ms. Perry's alleged knowledge of the alleged Miranda
12 violation, the circumstances that led up to the so-called
13 innocence proffer. And there are allegations that you make
14 that she contests. So my question is, given that there appears
15 to be a factual dispute on that component of your motion, do
16 you agree that this hearing is necessary to flesh out some of
17 those other allegations that you made?

18 MR. FINEMAN: I do agree that a hearing is necessary.
19 The only issue would be with the hearing is that I believe I
20 basically have made myself a witness.

21 THE COURT: That's why I asked, because I understand
22 that everybody may be prepared to go forward with respect to
23 the Miranda component of this, and you obviously can conduct
24 that hearing on behalf of your client, but to the extent that
25 you need to testify -- and I am trying to ascertain whether I

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1 do think you need to testify -- there needs to be counsel who
2 can represent the client in connection with this and those
3 arrangements, I gather, have not been made?

4 MR. FINEMAN: Not at this time. But I do have counsel
5 in mind that could be available.

6 THE COURT: But you think that there is a need for a
7 hearing with respect to some of your other allegations?

8 MR. FINEMAN: I do.

9 THE COURT: With respect to which allegations in
10 particular do you think that there is a need for a hearing?

11 MR. FINEMAN: Well, there are so many. I believe
12 there is a need for a hearing with respect --

13 THE COURT: I am not sure I understand why you are
14 laughing, but go ahead.

15 MR. FINEMAN: There is a need for a hearing with
16 respect to Ms. Perry's allegation that there was no promise
17 whatsoever made to my client with respect to the conversation
18 that led to his cooperation.

19 I think it is relatively clear from the motion papers
20 that very early on in this case the government has been seeking
21 my client's cooperation in this matter, and it is only at the
22 point at which my client informed me and I passed that
23 information on to the government that he could not cooperate as
24 a result of his innocence that Ms. Perry changed her tone and
25 said, Oh, let's do an innocence proffer and get that

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1 information and we will investigate it.

2 Well, I think that there needs to be a hearing as to
3 whether Ms. Perry actually conducted that investigation or
4 directed anybody to have an investigation.

5 THE COURT: Hang on.

6 You think the first issue is Ms. Perry's statement
7 regarding her interest in your client's cooperation; I take it
8 that includes the alleged statement about consideration of a
9 deferred prosecution agreement?

10 MR. FINEMAN: Yes.

11 THE COURT: The second part of it is what, statements
12 leading up to the innocence proffer?

13 MR. FINEMAN: Yes.

14 THE COURT: And then the third part includes the
15 promise to do an investigation?

16 MR. FINEMAN: And if the results of that investigation
17 were verified to the government's satisfaction, that the case
18 would be dismissed against my client.

19 THE COURT: Dismissed if they determined that in fact
20 he was innocent?

21 MR. FINEMAN: Yes.

22 THE COURT: What else?

23 MR. FINEMAN: Or if they didn't believe that they had
24 sufficient information to prosecute him as a result of the
25 information provided.

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1 THE COURT: What else?

2 MR. FINEMAN: I think that the hearing should discuss
3 when Ms. Perry became aware of the change in the Miranda
4 document, but that issue may be moot after this hearing, in
5 terms of the agent's testimony as to that document.

6 THE COURT: And we will talk about all of that in a
7 little more detail, but starting with the last one, the change
8 in the Miranda document to you is important because you
9 attribute nefarious motives to the change.

10 MR. FINEMAN: Yes, sir.

11 THE COURT: So you would have to build into that the
12 assumption that Ms. Perry would have to also attribute
13 nefarious motives to the change as well, in order for her
14 awareness of this change to become meaningful in this case,
15 right?

16 MR. FINEMAN: Yes.

17 THE COURT: What is the evidence that you have that
18 she was aware that it was a nefariously motivated change in the
19 Miranda document?

20 MR. FINEMAN: On its face, the Miranda document was
21 altered.

22 THE COURT: Right.

23 MR. FINEMAN: And that is a highly unusual
24 circumstance, to say the least, in terms of a Miranda document
25 where the most important issue in terms of Miranda is when the

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1 time of waiver was, and any conversation had before Miranda is
2 protected by Fifth Amendment privilege as opposed to after.

3 THE COURT: But as I understand it, what the
4 government is saying is that your client waived at the house
5 before there is this written waiver, that the agents go to the
6 house at 6 in the morning or so and that your client is
7 Mirandized then, according to the agents. He is orally
8 Mirandized and he orally waived. I understand you contest
9 that.

10 I have to say, when I read your papers I understood
11 them to be saying that the first time your client is Mirandized
12 is when he gets brought to the ICE office and he executes the
13 form. It was only when I read the government's response that
14 in their version of the events that he had already been
15 Mirandized and he already waived so that the statements that he
16 allegedly makes after the alleged waiver of his Miranda rights
17 is somewhere after 6 a.m. and before he gets to the office.
18 The government's view is those statements are admissible
19 because he waived.

20 I understand that you contest that. I understand
21 that.

22 But my point is, I am not sure then, given that --
23 let's assume for the sake of argument that the government, and
24 from Ms. Perry's perspective, she does her own investigation
25 and she believes the agents when they say that your client was

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1 Mirandized and he waived. What is nefarious about changing the
2 time on a waiver that ultimately he didn't do anything with?

3 He calls a lawyer, and the lawyer says, Don't talk.

4 And he says, I'm not talking.

5 And according to Ms. Perry, the agent stops. So I am
6 not sure what is nefarious about that, given that set of
7 circumstances, if those are the facts as Ms. Perry believed
8 them to be.

9 MR. FINEMAN: I would contest that Ms. Perry believed
10 that.

11 THE COURT: What is your basis for that?

12 Why is this any different from any other case where
13 defense makes a motion saying, I was not Mirandized or
14 consented to the search, or any of the other motions that are
15 obviously very important that are done pretrial?

16 Prosecutor talks to agents. Prosecutor believes the
17 agent's version.

18 Lawyer believes client's version.

19 And we have a hearing and I get paid a handful of
20 bucks to decide who I believe.

21 Why does that mean that either you or Ms. Perry is
22 wrong to believe the person that you believe?

23 MR. FINEMAN: The reason, I submit, your Honor, is
24 that at the time of my client's first indictment under S2, the
25 government had insufficient evidence.

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1 THE COURT: What is your basis for that?

2 MR. FINEMAN: The face of the indictment. The
3 indictment says in its face that my client caused the check to
4 be deposited, however, they don't state how they had any
5 knowledge that my client caused the check to be deposited.

6 THE COURT: They don't have to state that in the
7 indictment. All that they have to do is track the language of
8 the statute. They don't have to lay out the basis for the
9 allegation. I don't understand.

10 MR. FINEMAN: Based on the proffer, after the March 29
11 proffer, the types of questions that they were asking and the
12 types of information that was later included in the indictment
13 makes it clear that the indictment had changed.

14 THE COURT: What is it about the questions that they
15 asked that leads you to believe that Ms. Perry didn't think
16 that she had enough to get an indictment?

17 MR. FINEMAN: It is more than just having enough to
18 get an indictment. It is also having enough to have proof at
19 trial.

20 THE COURT: What is it about the questions that were
21 asked at the proffer that leads you to believe that this was a
22 bad faith prosecution? That is what you are saying, that the
23 government not only brought the case knowing it didn't have a
24 triable case, but knew that at the time when they got the
25 indictment.

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1 MR. FINEMAN: Yes, sir.

2 THE COURT: What is your evidence to support that
3 allegation?

4 MR. FINEMAN: Well, the only witness that the
5 government can point to that had any information about this
6 case is the individual by the name of Anthony Prince. Anthony
7 Prince is a four-time convicted felon.

8 THE COURT: I got that. He has a rap sheet as long as
9 your arm. How do you know that he is the only basis that the
10 government had, first of all? Secondly, so what? He is a
11 cooperator with a criminal history. Name me a criminal case
12 that doesn't have that.

13 MR. FINEMAN: But the government even stated to me
14 that he never had any direct contact with my client.

15 THE COURT: So what? They can have a circumstantial
16 case against your client.

17 I am not sure I understand, other than your surmise as
18 to what evidence you have that Ms. Perry, where she sought the
19 indictment against your client, the first indictment, she knew
20 that she didn't have enough to bring the case to trial. That
21 is a very serious allegation, and I want to know what the basis
22 for that serious allegation is.

23 MR. FINEMAN: The basis is the fact that we looked at
24 that proffer and that they never conducted any investigation
25 about the information that we provided, and that after that

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1 proffer that additional information ended up in an indictment
2 which was served on us that exact date that we came for a
3 conference, and that I personally called the people that we
4 provided the government that had information about my client's
5 business operations, about the conduct of that business, that
6 it wasn't just some corporation set up for the purpose of money
7 laundering; it was an actual viable business that had employees
8 at one time. We provided the government with that information
9 to speak to those people and they never did.

10 My client called his attorney before he made any
11 transactions in this case to find out, to seek legal counsel.

12 We were willing to allow the government to speak to
13 the Virginia attorney and discuss that issue, but they never
14 called the Virginia attorney --

15 THE COURT: Proffer sessions happen all the time.
16 Sometimes people are believed. Sometimes they are not.

17 Ms. Perry makes clear in her papers that the
18 statements that your client allegedly made the day of his
19 arrest, they didn't think were believable on the face. She
20 says there is a different set of statements that are given.

21 She says that your client basically acknowledges what
22 he said to the agents on the day of the arrest weren't true.
23 He gives a new story that Ms. Perry and the agents don't
24 believe.

25 She said that they conducted some investigation, but

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1 just because they apparently didn't believe everything or maybe
2 even nothing that your client said, and therefore didn't call
3 the people that you wished them to call, why is that evidence
4 that when they brought the first indictment, they knew they
5 didn't have a triable case, or is it just not evidence, that
6 maybe they didn't believe your client?

7 I just don't know why that is evidence of a bad faith
8 prosecution that was brought here.

9 MR. FINEMAN: I would submit that if your Honor were
10 to review the grand jury minutes from indictment No. 1 that
11 that question may be cleared up.

12 THE COURT: No. You are putting the egg before the
13 chicken or the cart before the horse. You have it backwards,
14 because I don't start reviewing a grand jury transcript and you
15 don't, unless there is some basis to think something untoward
16 was done here.

17 And I am just not sure I understand why it is and what
18 your evidence is, what your proof is. You are not happy that
19 the proffer happened. We will get to that in a minute. And
20 you are not happy that I guess that they didn't believe it or
21 didn't investigate it as much as you would like them to, but I
22 am not sure what that has to do with what was in their mind
23 when they originally brought the indictment. I just don't
24 understand that.

25 MR. FINEMAN: A lot of it has to do with our different

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1 versions of the facts. If you credit my version of the facts,
2 then Ms. Perry had been seeking cooperation all along.

3 THE COURT: Sure. But that is not unusual. But then
4 what happens, she says she is interested in your client's
5 cooperation. Among other things, he doesn't have a criminal
6 record. And she mentions time is of the essence. Fine.

7 According to you, she says that she would even be
8 willing to consider a deferred prosecution agreement which she
9 says, in her words, "I am certain I did not." That is a
10 factual dispute leading up to the cooperation discussion.

11 You report back that your client says no to
12 cooperation because he is innocent. It makes sense, if he is
13 innocent, what is there to cooperate against, people that he
14 didn't commit a crime with?

15 So then Ms. Perry says fine. So now there is a change
16 in the paradigm of the discussion.

17 And then Ms. Perry, according to you, says, Well, we
18 don't want to prosecute innocent people so if you want to bring
19 him in, bring him in.

20 So whatever promises were made, according to you,
21 about a deferred prosecution agreement in connection with
22 cooperation becomes moot, once the conversation changes to
23 whether or not your client is in fact innocent and therefore
24 did not want to cooperate.

25 MR. FINEMAN: That's correct.

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1 THE COURT: So I am not sure that I understand what
2 the purpose of going down the road of whether a DP was
3 discussed in the context of cooperation.

4 Let's assume that you are right. Let's assume that we
5 have a hearing and I agree with you. So what? You said no to
6 cooperation. What was the false pretense upon which your
7 client came into the innocence proffer? It wasn't that he was
8 going to get a DP because a DP wasn't on the table for those
9 purposes, right?

10 MR. FINEMAN: That's correct.

11 THE COURT: Then what happens?

12 So what happens, you decide to bring him in?

13 MR. FINEMAN: That's correct.

14 THE COURT: You did. Nobody put a gun to your head.

15 MR. FINEMAN: Absolutely.

16 THE COURT: Nobody put a gun to your head.

17 You are given an agreement that is in plain English,
18 and Ms. Perry says it is used for so-called innocence proffer.
19 It lays out what rights your client is waiving and you and your
20 client sign it, right?

21 MR. FINEMAN: That's correct.

22 THE COURT: So I am at a loss to understand, given
23 that sequence of events, what your proof is that there was any
24 bad faith decision by the government to initially indict your
25 client. I am still looking for that evidence.

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1 MR. FINEMAN: I would just defer to my papers.

2 THE COURT: I have read your papers, and if they
3 bowled me over, I wouldn't be asking these questions.

4 You make an allegation. You go to the grievance
5 committee and you accuse somebody of unethical conduct.

6 We have been going at it for about 10 or 15 minutes,
7 and I have not heard any evidence to support a single
8 allegation. I want to know what the evidence is other than
9 your speculation.

10 MR. FINEMAN: My evidence is that I had a conversation
11 with Ms. Perry as attorney to attorney, and she made certain
12 representations. And then after that --

13 THE COURT: We have covered that.

14 MR. FINEMAN: And that conversation culminated in the
15 proffer where Ms. Perry made further representations that she
16 would investigate the information provided.

17 And at that proffer, Ms. Perry didn't ask very many
18 questions about the information that we wanted to provide.
19 Instead she went into a cross-examination about the underlying,
20 un-Mirandized statement. She knew that statement was
21 un-Mirandized.

22 THE COURT: How do you know that?

23 MR. FINEMAN: She is a competent attorney.

24 THE COURT: She said she talked to the agent and the
25 agent said, We Mirandized the defendant and he waived, and she

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1 believed the agent. What is there extraordinary about that
2 fact scenario?

3 You believe your client. She believes the agent. OK.
4 We have a hearing. I decide.

5 What is it about that scenario that makes this
6 different than any other case where there is a challenge to a
7 statement that is allegedly made?

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9 (Continued on next page)

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1 MR. FINEMAN: Because when the government understood
2 that you would not cooperate and they knew that this case
3 wouldn't be resolved without trial, they needed additional
4 evidence against my client.

5 THE COURT: I'm still looking for the gun that said
6 you had to bring your client in for the proffer session. If
7 you thought the government had half a case or less than half a
8 case, no case, and you didn't want to bring your client in for
9 an innocence proffer -- which is a decision that counsel make
10 all the time, because they don't want to have their client look
11 bad, they don't want to waive self-incrimination rights, they
12 don't want to show their cards. The decision whether or not to
13 bring in a witness for an innocence proffer is a very delicate
14 decision. Nevertheless, the agreement is in plain English.

15 You signed it. You didn't have to bring your client
16 in, you didn't have to sign it. To the extent you are saying
17 that Ms. Perry knew she had no case, I still haven't seen that
18 evidence yet; knew that your client's Fifth Amendment rights
19 were violated, I haven't seen that evidence yet. So if the
20 whole proffer session was a ruse to get evidence, I still
21 haven't seen evidence for that yet either.

22 MR. FINEMAN: Perhaps at the conclusion of the hearing
23 you may.

24 THE COURT: Do you want to come take the stand and say
25 some of this stuff under oath? Is that what you want to do?

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1 Are you going to give me facts? Are you going to give me your
2 version of events that matters, or are you going to give me
3 your speculation?

4 MR. FINEMAN: Your Honor, I would rather not
5 speculate. I would rather say exactly what happened.

6 THE COURT: When you get to the punch line here, if it
7 is that she had to have known X or she must have known Y or I
8 suspect she knew Z -- I haven't seen anything that tells me why
9 it is I can conclude that, I can decide that, other than your
10 speculation. It is one premise based on another:

11 He was not Mirandised and Ms. Perry knew that;

12 And before that, by the way, before he was even
13 arrested, she knew she had no case, so she decided to indict
14 somebody she had no evidence on, she would go to trial with;

15 Then, she knows the agents violated your client's
16 Miranda rights, and then she tries to seek cooperation;

17 When she is rebuffed on that, she throws out the idea
18 of a proffer session, telling you in writing that anything your
19 client says can be used against him, not exactly a clever way
20 to get evidence, and you sign it;

21 Then, she doesn't believe your client any more than
22 the agents apparently believed him after he was arrested.

23 I am just trying to understand. I am willing to
24 assume your version of the events, the actual facts: That she
25 said she would consider a deferred prosecution agreement, that

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1 she said time was of the essence. I think you have a hard time
2 with your allegation that the statements were buried in a mass
3 of discovery, because she produces a letter or she separately
4 produces the statements. So that allegation has been rebuffed,
5 unless you want to press that.

6 MR. FINEMAN: They were produced at the same time.
7 Discovery was in a box and the statement was in an envelope.
8 They were produced at the same time.

9 THE COURT: Do you want me to go through the letters
10 with you? There is a documentary trail on this one.

11 MR. FINEMAN: I understand. I have gotten the
12 documents.

13 THE COURT: The statements were separately sent.

14 I didn't interrupt you. Please don't interrupt me.

15 The statements were separately sent under a separate
16 cover letter. In fact, the letter sent out the bulk of
17 discovery, let everybody know, not just you, let everybody know
18 that under a separate cover the statements, and so forth, will
19 be sent, which was what was done. So I am not sure that that
20 squares with what was in your allegations.

21 Be that as it may. If the government puts all this in
22 one box of discovery and doesn't identify any of the separate
23 stuff, presumably you have talked to your client, presumably
24 you have heard his version of the events, presumably you have
25 come to the conclusion that his rights were violated. Fine,

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1 you can file a suppression motion. But I still don't
2 understand how it is that anything was done to coerce or
3 mislead or your client, anything that happened at that
4 innocence proffer.

5 MR. FINEMAN: Your Honor, Ms. Perry said that she
6 would conduct an investigation. That investigation was never
7 conducted. She ran directly to another grand jury to supersede
8 the indictment. They added additional facts that were procured
9 at the proffer. Ms. Perry from day one has been saying that he
10 cooperated when he was arrested, he made all these statements,
11 he has inculpated himself, how can he be innocent, he is not
12 innocent. She had her opinion that he was not innocent.

13 THE COURT: Then you say, Ms. Perry, I will see you at
14 trial, I'm not bringing him in.

15 MR. FINEMAN: That's what I did.

16 THE COURT: But you brought him in and you signed the
17 agreement. You don't have to bring him in. You are going to
18 have to be very careful about what she said she would
19 investigate. She said she would investigate it to the extent
20 she thought your client was innocent.

21 What you are suggesting is that there has been
22 misconduct, so you can file a grievance against someone merely
23 because she decided not to believe your client and run down
24 leads she thought were pointless. Is that what you are saying?

25 MR. FINEMAN: That is not what I am saying.

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1 THE COURT: Then I am not sure I understand where the
2 problem here is.

3 MR. FINEMAN: Your Honor, I don't know how I can say
4 it any other way.

5 THE COURT: I think what we are going to have to do is
6 do the Miranda hearing today, and then you are going to have to
7 get another lawyer and we will take testimony, if that is what
8 you want to do, Mr. Fineman. If you want to take the stand and
9 come in and say this under oath, that's fine. We will do that.

10 MR. FINEMAN: OK.

11 THE COURT: Ms. Perry, anything you want to say thus
12 far?

13 Have a seat, Mr. Fineman.

14 You don't have to stand.

15 MS. PERRY: Thank you. Your Honor, it seems clear to
16 the government that no hearing is necessary even if Mr. Fineman
17 does determine that it is in his interest or his client's
18 interest to take the stand. There is no real factual dispute
19 here. The only thing he has pointed to over the course of this
20 colloquy is that -- two things, I suppose.

21 The first is he points to a statement in the
22 government's brief where I stated that no promises were made
23 with regard to the defendant's cooperation. He is misreading
24 what was stated in the brief. That is not in the affidavit. I
25 was simply rephrasing what was in the affidavit, which was I

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1 did not promise him deferred prosecution. It seems that that
2 may be the only question, did I promise deferred prosecution.

3 But it seems that in Mr. Fineman's reply affirmation
4 he agrees, as was just discussed, that by the time he came to
5 the innocence proffer, deferred prosecution was not on the
6 table anymore.

7 THE COURT: I think the deferred prosecution issue is
8 a red herring.

9 MS. PERRY: Then the only issue is my alleged failure
10 to do any investigation. I don't think there is a factual
11 question about that. I did state in my affidavit in paragraph
12 11 that the government did conduct a follow-up investigation.
13 That is unrefuted. He may have talked to one or two people
14 whom the government did not contact, but that does not amount
15 to a failure to investigate.

16 Of course, there is a common sense proposition that,
17 given that the government did not believe Mr. Alexander and
18 that we believed that he in fact had made admissions, there was
19 no need to follow up on his so-called innocent explanation.

20 So I don't think there are any open factual questions,
21 and I don't think he has pointed to anything. I don't think
22 that he gets a hearing just on a say-so even if he determines
23 that it is a good idea for him to proceed in that manner.

24 Maybe we can take that up following the hearing on the
25 Miranda issue, but it is the government's position that there

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1 are no open factual questions, that the question that will be
2 solved by your Honor on the question of Miranda will determine
3 all other corollary matters, and that no hearing will be
4 required.

5 THE COURT: Mr. Fineman, do you want to respond to any
6 of that?

7 MR. FINEMAN: No, your Honor.

8 THE COURT: I will take the agent's testimony on the
9 Miranda issue and see if Mr. Alexander wants to testify. That
10 is why I tried to go through, Mr. Fineman, point by point what
11 it is that you said. Factually speaking, the dispute is
12 whether or not Ms. Perry promised consideration of a deferred
13 prosecution in the context of cooperation, which would only
14 matter if we are talking about a cooperation agreement or a
15 cooperation proffer, and that is not what happened.

16 You say that there were statements that Ms. Perry made
17 leading up to the innocence proffer regarding the investigation
18 and the case will be dismissed if they found your client to be
19 innocent. You say they ran to the grand jury. You can say
20 that that is misconduct, you have said that, which I think is a
21 rather extraordinary assumption, or you can say they didn't
22 find your client to be innocent. A trial will sort out whether
23 they are right.

24 You said to Ms. Perry, this is a remarkable thing to
25 say, that she was aware of the violation of your client's

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1 Miranda rights, yet you haven't offered me a shred of proof of
2 that. You said that she was aware that she filed this
3 indictment initially even before your client was arrested, in
4 bad faith. There is not a shred of proof of that. I
5 understand inferences and circumstantial proof, but this
6 doesn't even come close. It is not even in the same ZIP code
7 as circumstantial proof.

8 I ask you again, if you take the stand, what is it you
9 are going to say that you think Ms. Perry needs to rebut?

10 MR. FINEMAN: Your Honor, as to indictment number S2,
11 the grand jury charges my client with respect to a check for
12 \$175,000. This was Count Five in S2. Now this check is Count
13 Seven in S4. So the government had the grand jury vote a true
14 bill and indicted my client for a check which he had no contact
15 with. Therefore, they indicted my client with respect to a
16 check they had no evidence against my client.

17 THE COURT: This is the one we are going to go to
18 trial on? The indictment we are going to go to trial on?

19 MR. FINEMAN: Yes. Indictment S4 at I believe it is
20 page 28 of indictment S4, Count Seven, is a check from Wachovia
21 Bank for \$175,000. The defendants charged are Douglas Shyne
22 and Natasha Shyne.

23 THE COURT: Yes.

24 MR. FINEMAN: Now if your Honor would look at
25 indictment S2 on page 14, Count Five, two checks totaling \$1.25

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1 million. One of those checks is that Count Seven check from
2 the newest indictment. They had no evidence against my client
3 with respect to that check, and yet a grand jury voted a true
4 bill.

5 THE COURT: Yes? That is not the one we are going to
6 trial on.

7 MR. FINEMAN: But that is what I have been saying all
8 along. The government presented evidence against eleven
9 people, and mixed in with those eleven people they may have
10 mentioned my client's name, but they did not have any direct
11 evidence against him.

12 THE COURT: Ms. Perry, do you want to respond?

13 MS. PERRY: Yes, your Honor. Mr. Fineman is objecting
14 that we actually --

15 THE COURT: Made a correction to take an allegation
16 out against him.

17 MS. PERRY: -- made a correction. There is evidence
18 that that check, the \$175,000 check, had the same MO as one of
19 the checks that Mr. Alexander deposited. We initially
20 categorized that check with Mr. Alexander. We subsequently
21 amended that and removed him from the charge. So the
22 indictment on which he will go to trial does not charge him
23 with that \$175,000 check.

24 THE COURT: In any event, I am not sure how it is a
25 factual dispute. The indictments speak for themselves. What

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1 else is there that I need to resolve by way of a factual
2 dispute, Mr. Fineman?

3 MR. FINEMAN: Besides what we have already discussed?

4 THE COURT: I am not sure I would use the word
5 "besides." I am looking for something, anything, any fact that
6 matters here that is in dispute. I haven't heard one yet.

7 MR. FINEMAN: Your Honor, based on the Court's
8 questions, I would withdraw my request for a hearing on that
9 issue. I would just request that the Court decide the motion
10 on papers.

11 THE COURT: Are you going to go to the grievance
12 committee with this? With this? There is not even a basis for
13 a hearing, and you go to the grievance committee? I will
14 decide on the papers. And maybe I'll be talking to the
15 grievance committee.

16 Are we prepared to go on the Miranda hearing?

17 MS. PERRY: Yes, your Honor. The government calls
18 Special Agent Ruben Correa.

19 RUBEN CORREA,

20 called as a witness by the government,

21 having been duly sworn, testified as follows:

22 THE CLERK: State and spell your full name for the
23 record.

24 THE WITNESS: My first name is Ruben, R-U-B-E-N, last
25 name Correa, C-O-R-R-E-A.

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1 THE COURT: Ms. Perry, you may proceed.

2 DIRECT EXAMINATION

3 BY MS. PERRY:

4 Q. How are you employed?

5 A. I'm a special agent with the Department of Homeland
6 Security Immigration and Customs Enforcement.

7 Q. How long have you been with ICE?

8 A. Since June of 2003.

9 Q. How were you employed prior to your employment with ICE?

10 A. I was a criminal investigator with the U.S. Attorney's
11 office in the Southern District of New York from 2001 to 2003.

12 Q. Did you have any law enforcement experience prior to that?

13 You can start at the beginning.

14 A. From the beginning in 1988 I was with the New York State
15 Police until 1989. From 1990 through '94 I was an investigator
16 with the district attorney's office in the Bronx. From 1994
17 through 2001 I was a deputy United States Marshal in the
18 Southern District of New York.

19 Q. What were your responsibilities with the marshal's office?

20 A. Most of my time there was spent with the warrant squad,
21 fugitive squad.

22 Q. Primarily conducting arrests?

23 A. Executing arrest warrants and fugitive investigations.

24 Q. From the marshal service you went to the Southern District
25 and from Southern District to ICE?

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Correa - direct

1 A. Correct.

2 Q. Where are you assigned with ICE?

3 A. I am currently with the Eldorado task force, which is a
4 financial crimes task force in New York.

5 Q. Over the course of your nearly 20 years in law enforcement,
6 approximately how many arrests have you been involved in?

7 A. Hundreds.

8 Q. How many times have you had occasion to administer Miranda
9 warnings over this career?

10 A. At least a hundred.

11 Q. Have you also participated in post-arrest interviews?

12 A. I have.

13 Q. Numerous?

14 A. Numerous, too many to count.

15 Q. Directing your attention to February 9, 2006, did there
16 come a time when you spoke with an individual named Nathaniel
17 Alexander?

18 A. There did.

19 Q. Where did that occur?

20 A. At his residence. Initially at his residence in
21 Portsmouth, Virginia.

22 Q. Why were you there at his residence in Portsmouth?

23 A. To execute an arrest warrant issued in the Southern
24 District of New York.

25 Q. Prior to that date, February 9, 2006, when was the first

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Correa - direct

1 that you had heard of Mr. Alexander?

2 A. Maybe a day or two before.

3 Q. To your knowledge, did you have any prior involvement in
4 the investigation of the case prior to hearing of Mr.
5 Alexander?

6 A. No.

7 Q. When you first heard about Mr. Alexander, what was the
8 context?

9 A. I'm sorry?

10 Q. What was the context of first learning of Mr. Alexander's
11 existence?

12 A. It was in the preoperational briefing. We are required to
13 have briefings where we are going to do things like search
14 warrants, arrest warrants. That is where you learn of your
15 role and what you are going to do.

16 Q. Did you learn generally of the nature of the charges
17 against Mr. Alexander at that time?

18 A. I believe it was bank fraud.

19 Q. You are not the case agent in this case?

20 A. I'm not.

21 Q. Did anyone else from your office participate in any series
22 of arrests on February 9, 2006?

23 A. I traveled to Virginia with another special agent from my
24 office.

25 Q. Did that agent participate in Mr. Alexander's arrest?

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Correa - direct

1 A. No.

2 Q. Was that the case agent?

3 A. No.

4 Q. Were you accompanied by anyone else to Mr. Alexander's home
5 on February 9, 2006?

6 A. I was. There were several members of our RAC office in
7 Norfolk, Virginia.

8 Q. What is a RAC office?

9 A. I believe it stands for resident agent in charge. It is
10 sort of a suboffice. In New York I work for a SAC office,
11 which is special agent in charge. Then you have your
12 suboffices and we call those RACs.

13 Q. A smaller satellite office?

14 A. Right.

15 Q. Approximately what time did you and these other agents
16 arrive at Mr. Alexander's home?

17 A. Approximately 6:00 a.m.

18 Q. What was the first thing that happened when you arrived
19 there?

20 A. We knocked on his door and identify ourselves. Mr.
21 Alexander opened the door.

22 Q. What happened after he opened the door?

23 A. He identified himself as Nathaniel Alexander, and I
24 informed him that there was an arrest warrant for him and that
25 he had to come down.

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Correa - direct

1 Q. Where was your gun when you knocked on the door?

2 A. In my holster.

3 Q. Did you ever take it out at any time when you were with Mr.
4 Alexander on February 9th?

5 A. No.

6 Q. Did any of the other agents take out their guns?

7 A. Not that I saw.

8 Q. So Mr. Alexander was then placed under arrest?

9 A. Yes.

10 Q. What happened after he was placed under arrest, immediately
11 thereafter?

12 A. I walked with Mr. Alexander to his living room, and the
13 other agents or officers that were with me did a security sweep
14 of the house.

15 Q. What do you mean by security sweep?

16 A. A security sweep when you are executing an arrest warrant
17 is just a quick search throughout the rooms of the house to
18 make sure that there are no people in the house or any
19 dangerous objects in plain view.

20 Q. After the area was secured and Mr. Alexander was in the
21 living room, what was the next thing that happened?

22 A. Other members of his family were throughout the house and
23 they were all told to go into the living room.

24 Q. Was Mr. Alexander dressed when he answered the door?

25 A. I remember that he wasn't in underwear, he wasn't naked or

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Correa - direct

1 in underwear. He had night attire, but I can't remember if it
2 was a T-shirt or long pajamas. He was dressed somehow, but I
3 can't remember exactly what he was wearing.

4 Q. At some point was he allowed to change into street clothes?

5 A. Yes. We asked another member of his family to bring
6 clothes to him.

7 Q. And he was allowed to dress, fully dress?

8 A. Yes. Shoes, pants.

9 Q. After he was in the living room, was he placed somewhere
10 else?

11 A. After the security sweep and everybody was brought into the
12 living room, I walked with Mr. Alexander to his dining room.
13 At this time everybody was asking why we were there, so I was
14 going to explain to them why we were there. So I pulled him to
15 the side, into his dining room.

16 Q. What happened when you got to the dining room with Mr.
17 Alexander?

18 A. He wanted to know what the charges were, why we were
19 arresting him. I told him that I could not speak to him until
20 I advised him of his rights first.

21 Q. Why did you tell him that?

22 A. It has been my experience whether you are going to ask
23 questions or not, even if you are just going to explain the
24 charges, as you are explaining them, they will start making
25 statements. If you want to use those statements, their rights

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Correa - direct

1 have to be waived voluntarily.

2 Q. Did you in fact recite Mr. Alexander his Miranda rights at
3 that time?

4 A. I did.

5 Q. What did you say to him specifically?

6 A. I explained to him that before I could speak to him, I
7 needed to advise him of his rights. I said: You have the
8 right to remain silent; anything you say can and will be used
9 against you in a court of law or other proceeding; you have the
10 right to an attorney and to have that attorney present before
11 or during any questioning; if you cannot afford an attorney,
12 one will be appointed to you at no cost; if you do decide to
13 speak to us now, you can at any time choose to exercise any of
14 the rights which I have just explained to you. Then I asked
15 him if he understands, and if he does, which he did, I told him
16 if he is willing to waive his rights and speak to us now, and
17 he did.

18 Q. So he indicated to you that he fully understood each and
19 every one of those rights?

20 A. Yes.

21 Q. Did you have any reason to believe that he did not
22 understand those rights?

23 A. No.

24 Q. Where were you physically when you Mirandized him?

25 A. We were in the dining room seated at his dining room table.

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Correa - direct

1 Q. Did he appear comfortable at this time?

2 A. Comfortable? He was just anxious. He wanted to know what
3 was going on.

4 Q. Was he dressed at this point?

5 A. I believe he was, yes.

6 Q. You say you were at the dining room table.

7 A. Yes.

8 Q. Were you seated very close to him? How were you seated?

9 A. He has, from what I can recall, a long table, a fairly
10 large dining room. He has a long table, and we were both
11 seated on the same side, in front of each other.

12 Q. Was there anyone else present at that time in the dining
13 room?

14 A. Yes. There were other agents. Actually, there was a
15 uniformed officer in the house, too. I believe he was a local
16 officer. I can't remember from what department, but he was in
17 the house. They were walking back and forth.

18 Q. To your letter any specific names of any of the other
19 agents that were there that day?

20 A. No. The only agent I can recall is from our RAC office,
21 another ICE agent, whose name is Pete. I can't recall his last
22 name.

23 Q. When was the first time you had met the agents that
24 participated in the arrest with you that day?

25 A. That morning.

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Correa - direct

1 Q. If you could estimate, how soon after you entered Mr.
2 Alexander's house did you Mirandize him?

3 A. I would say no more than ten minutes.

4 Q. Did he make any substantive statements to you prior to
5 being Mirandized?

6 A. No. He just wanted to know what was going on.

7 Q. After you had advised Mr. Alexander of his Miranda rights,
8 did he then begin making statements?

9 A. Yes. Well, I advised him -- first, I advised him -- after
10 his arrest, I told him what the arrest was for. I told him it
11 was for bank fraud out of New York, specifically for something
12 that had to do possibly with check fraud.

13 He said, oh, I know what this is about, I know what
14 this is about, and started talking about --

15 Q. Let me interrupt you. I don't want to get into the
16 substance. Your testimony is he began making statements after
17 he was Mirandized?

18 A. Yes.

19 Q. How would you describe his demeanor at this point?

20 A. Very cooperative. Once he realized what the charges were,
21 he wanted to tell his side of it.

22 Q. While he was making statements to you, was he asked at any
23 time for consent to conduct a search of his home?

24 A. Yes.

25 Q. I'm sorry. Continue.

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Correa - direct

1 A. Because of what he told me, he told me he had a business, I
2 asked him if there were any financial papers in the house, any
3 financial documents. I asked him for permission to search for
4 any evidence of financial fraud, if he had papers in the house.

5 Q. Did he in fact consent to that search?

6 A. He did.

7 Q. Did he specifically tell you where you might search for
8 financial documents?

9 A. Yes. I told him instead of searching throughout his entire
10 house and everything, it would be easier if he just told me
11 where the papers, any financial papers were. He said if there
12 were any financial papers, they would be in his briefcase. So
13 we asked someone to bring the briefcase to the dining room.

14 Q. He specifically told you where you could locate that
15 briefcase?

16 A. Yes. I'm not sure if I can remember, but it may have been
17 in the bedroom and someone brought it out.

18 Q. Wherever it was, you recall that he told you where it was
19 and you or other agents in fact were able to locate it based on
20 that description?

21 A. Exactly.

22 Q. At some point clearly you left Mr. Alexander's home. Where
23 did you go from there?

24 A. We started to transport him back to the RAC office in
25 Norfolk.

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Correa - direct

1 Q. Let me back up for a moment. Were you there for some
2 period of time while he was talking to you?

3 A. Yes.

4 Q. Could you give a rough estimate, if possible.

5 A. 20, it couldn't have been more than 30 minutes.

6 Q. Was he making statements to you during this entire time?

7 A. Yes.

8 Q. After you left his home, where did you go?

9 A. We took him out to the car and began transporting him to
10 the RAC office.

11 Q. By the way, was he in handcuffs at this point during
12 transport?

13 A. Yes.

14 Q. Do you recall if he was in handcuffs while he was at his
15 home making statements?

16 A. I don't remember. I do remember that he wasn't cuffed
17 behind his back. He wasn't cuffed behind his back in the car
18 either.

19 Q. How do you recall that?

20 A. I remember him speaking with his hands, and they were in
21 front of him. Usually, especially in the car, if someone has
22 their hands behind their back they are very uncomfortable and
23 they lean forward. I remember him speaking with his hands.

24 Q. You said you went to the RAC office?

25 A. Yes.

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Correa - direct

1 Q. Who is "we"? Who transported Mr. Alexander?

2 A. I was in the backseat with Mr. Alexander, and there was a
3 driver.

4 Q. Another agent?

5 A. Another agent.

6 Q. Did you receive any phone calls while you were in transit
7 to the RAC office?

8 A. Well, I was on the phone. I don't know if I made a phone
9 call or received it.

10 Q. Whose phone were you on?

11 A. I was on mine.

12 Q. Is that an office-issued phone, an official business phone?

13 A. Yes.

14 Q. By the way, do you receive phone records for that phone?

15 A. I don't, no.

16 Q. What did you do in response to that phone call?

17 A. In that phone call I was informed that that day there were
18 two arrest warrants being executed in the same general area. I
19 was advised that the other team had not made an arrest, they
20 were still at the residence of the subject, and apparently he
21 wasn't home and they couldn't locate him.

22 Q. Who was that subject?

23 A. Steve Riddick.

24 Q. Who is Steve Riddick generally vis-a-vis the defendant, if
25 you know?

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Correa - direct

1 A. Who is he?

2 Q. Were they acquaintances?

3 A. Oh. Friends. I later learned that they were friends,
4 business associates.

5 Q. What did you do in response to receiving that information?

6 A. At that time I turned to Mr. Alexander and told him about
7 the other arrest warrant for Steve Riddick and asked him if he
8 knew where Steve was.

9 Q. Did he agree to help you contact Mr. Riddick?

10 A. Oh, yes. He started to say he had contact numbers for
11 Steve but they were back at the house.

12 Q. Did he place any phone calls from the car?

13 A. He did.

14 Q. Whose phone did he use?

15 A. I don't remember. From what I remember, there were two
16 phones in the car, at least two phones in the car. There was
17 mine, there was the driver's.

18 Q. So whether he used your phone or the driver's, you don't
19 recall?

20 A. No.

21 Q. Were there any other agents traveling in any other cars
22 back to the office?

23 A. Yes. There were several agents there.

24 Q. When Mr. Alexander told you that he had the contact numbers
25 back at the home, at his residence, did you do anything in

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Correa - direct

1 response to that information?

2 A. Yes. I let him call his residence. I believe it may have
3 been his wife back home. He had the contact numbers. He
4 stated he had the contact numbers for Steve Riddick in his cell
5 phone.

6 Q. Was that cell phone retrieved from the home?

7 A. Yes.

8 Q. Do you know by whom?

9 A. Specifically, no.

10 Q. It wasn't by you?

11 A. No.

12 Q. It would have been by another agent?

13 A. Yes.

14 Q. Did Mr. Alexander continue to make statements to you about
15 the case while you were in transit to the RAC office?

16 A. No. At that point we were concentrating on trying to find
17 Steve Riddick.

18 Q. What happened when you got to the RAC office?

19 A. There was a small processing area with a cell, a single-
20 person cell. We placed him in the processing area in the cell.

21 Q. Did you in fact process him?

22 A. Yes, I began to process him.

23 Q. Can you please describe where you were seated and where Mr.
24 Alexander was seated in that processing room.

25 A. The processing room is a very small office-size room. He

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Correa - direct

1 was seated in the cell with the door open. Maybe about four
2 feet away from the cell is a table with processing paperwork, a
3 fingerprinting station.

4 Q. You stated he was seated in the cell with the door open?

5 A. Yes.

6 Q. Did he appear comfortable to you at that point?

7 A. Very.

8 Q. Was he in handcuffs? You said he had been cuffed in
9 transit?

10 A. Yes.

11 Q. Were his cuffs removed at some point after you returned to
12 the RAC office?

13 A. I don't remember.

14 Q. Were there other agents in the processing room with you and
15 Mr. Alexander?

16 A. The other agent that I knew as Pete would walk in and out.
17 It wasn't my office, so I didn't know where any of the
18 paperwork was or how to find fingerprint cards and things like
19 that.

20 Q. What was the first thing that happened after he was
21 processed?

22 A. During the time we were processing him, we were still
23 trying to find Steve Riddick. But after we stopped talking
24 about that and he was processed, he wanted to continue talking
25 about the case.

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Correa - direct

1 Q. What did you do?

2 A. I'm not the case agent. During the operational briefing
3 and this whole arrest, I'm more concerned with the logistics of
4 the arrest rather than the details of the charges. So I didn't
5 know much about the case myself. So before I sat down to talk
6 to him again, I asked one of the agents to get me a copy of the
7 indictment.

8 Q. Did you in fact receive a copy of the indictment?

9 A. Yes.

10 Q. What did you do once you had the indictment in hand?

11 A. I sat down and I started reading, was going to read the
12 indictment to Mr. Alexander.

13 Q. Did you do anything prior to going through the indictment
14 with him?

15 A. Yes.

16 Q. What was that?

17 A. I advised him of his rights again.

18 Q. Why did you advise him of his rights again?

19 A. A considerable amount of time had passed since we last
20 talked about the case, which was at his residence. This time I
21 had the indictment in hand. At the residence we didn't really
22 get into details about his account of what happened. I wanted
23 to get into better detail just to cover myself. I advised him
24 of his rights again.

25 Q. You advised him verbally of his rights again?

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Correa - direct

1 A. Yes.

2 Q. You went through each of the rights that you described
3 earlier?

4 A. Yes.

5 Q. Did he indicate he understood those rights?

6 A. He did.

7 Q. Did he agree to continue speaking with you?

8 A. Yes.

9 Q. And did he in fact speak with you?

10 A. Yes.

11 Q. During the time that you were in this processing room with
12 Mr. Alexander and he was making statements, was he also
13 continuing to place phone calls to attempt to find Mr. Riddick?

14 A. Most of the phone calls that were placed were before that.
15 There may have been one or two after that.

16 Q. Was he using his own phone at this point?

17 A. I remember that he was, yes.

18 Q. So in the interim someone had brought him his cell phone?

19 A. Yes.

20 Q. Do you know specifically how he was attempting to contact
21 Mr. Riddick?

22 A. From what I can remember, he was calling either friends or
23 students of Mr. Riddick, friends or track students of Mr.
24 Riddick.

25 Q. Did you describe Mr. Alexander's demeanor while he was at

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Correa - direct

1 the RAC office.

2 A. He was being very cooperative. He wanted to explain that
3 this was a misunderstanding and wanted to explain the story of
4 the checks.

5 Q. At some point was Mr. Alexander also presented with a
6 written waiver form?

7 A. Yes.

8 Q. Where did you get that form?

9 A. Another agent at the RAC office brought the form to me.

10 Q. Do you recall the name of that agent?

11 A. Pete.

12 Q. Do you know Pete's last name?

13 A. No.

14 Q. Had you ever met Pete before that day?

15 A. No.

16 Q. Since that day have you ever spoken with Pete?

17 A. No.

18 Q. Have you ever laid eyes on Pete again?

19 A. I could pass him on the street and I wouldn't know him.

20 Q. After Pete gave you the form -- were you still in the
21 processing room at this point?

22 A. Yes.

23 Q. At some point did you leave the processing room?

24 A. Yes. Throughout the process we were looking for an
25 available room, because the processing room is kind of small.

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Correa - direct

1 So one became available, and we took the waiver form and Mr.
2 Alexander to an open conference room.

3 Q. Was it in the conference room that you then presented him
4 with a written form?

5 A. Yes.

6 Q. Do you recall if he was handcuffed at this point while you
7 were in the conference room?

8 A. I doubt it, but I don't recall. I mean there was no reason
9 why he would be. He was being very cooperative, and I felt no
10 security concerns with him.

11 Q. After you presented the form to Mr. Alexander, did he go
12 through it and read it?

13 A. He did. We both did.

14 Q. I'm sorry?

15 A. We both did.

16 Q. Did he indicate that he understood it?

17 A. Yes.

18 Q. Did he expressly agree to speak with you after reading it?

19 A. Yes.

20 Q. I would like to show you what I have marked for
21 identification as Government Exhibit 1 and ask you to describe
22 it to us.

23 A. This is the statement of rights which he signed.

24 Q. Did you sign that as well?

25 A. Yes.

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Correa - direct

1 Q. Is that signed by anyone else?

2 A. Pete, Peter.

3 Q. Is that the agent that you were discussing earlier?

4 A. Yes.

5 MS. PERRY: The government offers Government Exhibit 1
6 at this time.

7 MR. FINEMAN: No objection.

8 THE COURT: Government Exhibit 1 is received.

9 (Government's Exhibit 1 received in evidence)

10 Q. Special Agent Correa, who filled out the portion of the
11 form containing the dates and time of the signature?

12 A. I didn't fill them out. I believe that Peter filled them
13 out.

14 Q. Do you see the area with the time of the signatures is
15 marked?

16 A. I do.

17 Q. What does that say?

18 A. Originally it says 0900. That is crossed out, and then
19 underneath it it says 0830.

20 Q. Looking at the top line, are you clear that it says 0900?

21 A. Well, it looks like either 0900 -- it looks like there was
22 an 0930 and 0900. The 0 and the 3 are written over each other.
23 I can't tell which was written first.

24 Q. Next to that initial time which is marked out, there is a
25 marking. Do you know what that is?

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Correa - direct

1 A. Next to the --

2 Q. Next to the 9?

3 A. The first one?

4 Q. 0900.

5 A. An initial.

6 Q. Do you know whose initial that is?

7 A. No.

8 Q. Is that yours?

9 A. No.

10 Q. Underneath that change there is another time indicated.

11 A. Yes.

12 Q. Do you see that? What does it say?

13 A. 0830.

14 Q. Do you see next to that there is another marking?

15 A. Another initial.

16 Q. Do you know whose initials that is?

17 A. I don't know. I don't believe it's mine.

18 Q. Do you recall why that change was made?

19 A. No. I don't even recall the change at all.

20 Q. Did you make any changes to that form outside of Mr.

21 Alexander's presence?

22 A. No.

23 Q. Any changes were made in Mr. Alexander's presence or would
24 have been made in Mr. Alexander's presence?

25 A. Yes.

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Correa - direct

1 Q. After signing the form, did Mr. Alexander continue to speak
2 with you?

3 A. Yes, he did. After signing the form, I told him that I
4 wanted to go through the whole story one more time while I took
5 notes, general notes.

6 Q. Just to be clear, that is your signature on the bottom, the
7 first line?

8 A. The top full signature.

9 Q. The witness?

10 A. The first witness.

11 Q. That is Peter's underneath yours?

12 A. That is Pete's underneath.

13 Q. Mr. Alexander printed and signed his name above your two
14 names?

15 A. Yes.

16 Q. Can you just repeat your last answer. I asked what
17 happened after he signed the form.

18 A. I told him that I wanted to go through the whole story from
19 beginning to end one more time while I took notes.

20 Q. Did he go through that story with you, beginning to end,
21 after this written form?

22 A. Yes.

23 Q. Did you in fact take some notes?

24 A. I did. While he was talking, I took general notes.

25 Q. Did you then go through the statement that you had written?

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Correa - direct

1 A. Yes.

2 Q. With him?

3 A. I wrote it in a form so that he could sign it, he could
4 read through it and sign it.

5 Q. Did you ask him to sign it?

6 A. I did.

7 Q. What did he say to you in response?

8 A. At that time he was not comfortable, seemed like he wasn't
9 comfortable signing anything. He wanted to speak to an
10 attorney and ask him if he should sign it.

11 Q. Did he in fact have the opportunity to speak with an
12 attorney at that point?

13 A. Yes. As soon as he said that, we let him make a phone call
14 to his attorney.

15 Q. Was this the first time that he had asked to speak with an
16 attorney, that morning?

17 A. First time.

18 Q. What happened after he placed that phone call?

19 A. He was on the phone for a short period of time, maybe about
20 a minute. After he was off the phone, he said he was advised
21 not to sign anything.

22 Q. What happened at that point?

23 A. At that point we concluded the interview and he was taken
24 to the Marshals Service to be arraigned.

25 Q. From the time he signed the Miranda waiver form that is

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Correa - direct

1 marked as Government Exhibit 1 until the time he called his
2 attorney, can you say approximately how much time went by?

3 A. From the time he signed it to the time he called his
4 attorney? I would say no more than 30 minutes. That's rough.

5 Q. Have you been shown any phone records in this case?

6 A. No.

7 MS. PERRY: I have no further questions, your Honor.

8 THE COURT: Cross-examination.

9 MR. FINEMAN: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MR. FINEMAN:

12 Q. Good morning, Agent Correa. Is that how you pronounce your
13 name?

14 A. Close enough.

15 Q. I apologize. I represent the defendant in this matter. I
16 am going to be asking you a new number of questions. If you
17 don't understand a question that I ask, ask me to repeat it and
18 I will do my best to make it so you understand it.

19 A. OK.

20 Q. Where do you work?

21 A. I'm with Immigration and Customs Enforcement in New York.

22 Q. When was the first time that you did any work with respect
23 to this case? When were you first apprised of this case?

24 A. It may have been a day or a few days before the actual
25 warrant.

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Correa - cross

1 Q. Do you remember the date that you made the arrest?

2 A. February 9th.

3 Q. So it would have been February 8th or 7th?

4 A. Thereabouts, yes.

5 Q. You testified earlier that you were not involved in the
6 investigation of this case, you are just there to make the
7 arrest, is that true?

8 A. That's true.

9 Q. Do you know who the lead agent on this case is?

10 A. Yes.

11 Q. Who is that?

12 A. Special Agent Eric Rosenblatt.

13 Q. Prior to going to Virginia to make this arrest, did you
14 have a conversation with Mr. Rosenblatt?

15 A. Yes.

16 Q. Did you discuss this case at all?

17 A. Yes.

18 Q. Did he tell you the circumstances of the case, the
19 allegations?

20 A. Yes.

21 Q. Did he tell you what the allegations were with respect to
22 Mr. Alexander?

23 A. You mean besides bank fraud?

24 Q. No. Did he tell you what the allegations were in the
25 indictment as against Mr. Alexander?

67brale2

Correa - cross

1 A. Not a lot of detail, but that they had to do with --

2 Q. You can just answer yes or no.

3 A. Yes.

4 Q. Prior to going to Virginia, did you have any conversations
5 with anybody at the United States Attorney's office?

6 A. No.

7 Q. Were you informed who would be the Assistant United States
8 Attorney on this case was?

9 A. Yes.

10 Q. Who was that person?

11 A. Danya Perry.

12 Q. Who informed you of that?

13 A. Eric Rosenblatt.

14 Q. Were you instructed to do anything besides arrest the
15 defendant when you went to Virginia?

16 A. No, other than take a statement if he wanted to give one.

17 Q. So you instructed to take a statement?

18 A. I wasn't discouraged from it.

19 Q. But you had discussed taking a statement?

20 A. Yes.

21 Q. In order to assist you in that endeavor, you were told some
22 details about the case, isn't that true?

23 A. Not a lot.

24 Q. What you are saying is that you were to go to take a
25 statement about a case you didn't know anything about?

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Correa - cross

1 MS. PERRY: Objection.

2 THE COURT: Sustained.

3 Q. If you know, why didn't Agent Rosenblatt go to make the
4 arrest?

5 A. I don't know.

6 Q. You don't know?

7 A. No.

8 Q. How was it decided that you would be the one to go?

9 MS. PERRY: I'm sorry. I missed the question.

10 MR. FINEMAN: How was it decided that this agent would
11 be the one to go to Virginia.

12 A. I was available.

13 Q. Did anybody discuss it with you prior?

14 A. As far as my availability to go?

15 Q. Yes.

16 A. My supervisor.

17 Q. I just want to get a little bit of background. Did you
18 volunteer to go? Did you ask to go?19 MS. PERRY: Objection, your Honor. This is completely
20 irrelevant.

21 THE COURT: What is the relevance of this?

22 MR. FINEMAN: Your Honor, the agent testified before
23 that he had no knowledge about what the case was really about.
24 He didn't even read the indictment prior to getting to the RAC
25 office. But he just testified that he was asked to take a

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Correa - cross

1 statement, if possible.

2 THE COURT: I am still not sure why it matters as to
3 how he was selected.

4 MR. FINEMAN: I will move on then.

5 THE COURT: OK.

6 Q. Who asked you to take a statement from the defendant?

7 MS. PERRY: Objection.

8 THE COURT: Overruled.

9 A. That would be Eric Rosenblatt.

10 Q. Were you instructed to try to find any physical evidence?

11 A. Specifically, no.

12 Q. Specifically? Were you instructed to look for physical
13 evidence or were you not instructed to look for physical
14 evidence?

15 A. There was no search warrant, so we didn't prepare for that.
16 But as a general rule, if you go to someone's house on charges,
17 you ask for consent to look through the house for anything that
18 has to do with the charges.

19 Q. As a general rule, you ask for consent to search a person's
20 home, is that what you are testifying?

21 A. Yes.

22 Q. By whom is that rule promulgated?

23 A. It is just a common practice.

24 Q. Were you trained when you became an agent for the federal
25 government?

67brale2

Correa - cross

1 A. Was I trained?

2 Q. Yes.

3 A. Yes.

4 Q. That training, did it include asking for permission to
5 search people's homes when you make arrests?

6 A. Absent a search warrant, it is a requirement.

7 Q. I understand it is a requirement that you have to ask for
8 permission. Were you trained to ask for permission?

9 A. Pursuant to search warrant, I was trained to ask permission
10 if I wanted to look in someone's house, yes.

11 Q. But there was no search warrant in this case, is that
12 correct?

13 A. Not that I was aware of, no.

14 Q. What kind of search warrant did you have? Excuse me. What
15 kind of a warrant did you have?

16 A. An arrest warrant.

17 Q. Is it true that that warrant was based on an indictment?

18 A. Yes.

19 Q. February 9, that was the date that you actually made the
20 arrest?

21 A. Correct.

22 Q. What time did you get to my client's home?

23 A. About 6:00 a.m.

24 Q. You testified earlier that he answered the door?

25 A. Yes.

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Correa - cross

1 Q. You then testified that you have to come inside, is that
2 what you said before?

3 A. Yes.

4 Q. Why did you have to come inside my client's home?

5 A. He was inside the house and I needed to effect the arrest.

6 Q. Wasn't he at the door?

7 A. Yes.

8 Q. You testified that he was dressed.

9 A. He didn't have street clothes on.

10 Q. But he was wearing clothing?

11 A. He was wearing something. I'm not sure if it was pajamas
12 or something. I think I would have recollected if he were
13 naked or in skivvies or anything.

14 Q. But he wasn't in his underwear, is that true?

15 A. I don't remember him in underwear, no.

16 Q. To the best of your recollection, he was dressed?

17 MS. PERRY: Objection.

18 THE COURT: He has already said what he thought he was
19 wearing.

20 Q. He was at the door when you arrived there? You knocked on
21 the door or rang the bell and he came to answer it, isn't that
22 true?

23 A. That's true.

24 Q. So you could have taken him with you to the federal
25 building at that point. What was the purpose of going into the

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Correa - cross

1 building?

2 A. He was inside his doorway. He answered the door inside his
3 doorway.

4 Q. You had an arrest warrant. How far away was he? Was he
5 the distance between me and you right now, say approximately,
6 for the record, 15 feet?

7 A. No, sir.

8 Q. How close was he to you?

9 A. I would say no more than from here to the machine.

10 Q. To the court reporter, say, for the record, four feet?

11 A. I would say four or five feet, yes.

12 Q. Did he make it seem like he was going to run back into the
13 building?

14 A. I had no idea.

15 Q. Did you ask him to come outside?

16 A. I did not.

17 Q. You just walked into his home?

18 A. Yes, sir.

19 Q. You testified that you conducted a security sweep?

20 A. Yes.

21 Q. Did you personally conduct that security sweep?

22 A. No.

23 Q. Who conducted the sweep?

24 A. Other agents.

25 Q. How many other agents?

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Correa - cross

1 A. I don't remember.

2 Q. Do you have a ballpark figure of how many agents were with
3 you that day?

4 A. Ballpark? Six.

5 Q. Of those six, do you recall how many went into the house
6 with you?

7 A. I think most went in. I'm not sure who may have stayed
8 outside.

9 Q. So you didn't go in alone?

10 A. No.

11 Q. You went in with at least two or three other people?

12 A. Yes.

13 Q. There were as many as six people there that day, yes?

14 A. Well, yes, roughly. I don't remember exactly, but yes.

15 Q. Could there have been more than six people with you?

16 A. Yes.

17 Q. What is a security sweep?

18 A. It is a quick look through the rooms to see if there are
19 people hiding or there is any dangerous objects in the room, a
20 gun laying on a bed or anything like that.

21 Q. What is the purpose of a security sweep?

22 A. To establish that the premises are secure before we feel
23 comfortable doing anything else.

24 Q. What else were you supposed to do at my client's residence
25 that day?

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Correa - cross

1 A. Other than effect the arrest?

2 Q. Yes. Other than to effect the arrest, what else were you
3 supposed to do in his residence?

4 A. That was the requirement.

5 Q. That was it, right?

6 A. That was it.

7 Q. When you walked into his home, you became closer to him
8 physically. As you were walking into his home, that distance
9 of four feet was shrinking?

10 A. Yes, sir.

11 Q. At that point when you came up to him, physically into his
12 home, you could have placed the cuffs on him and taken him out,
13 isn't that correct? Isn't that true?

14 A. He needed to get dressed.

15 Q. He needed to get dressed?

16 A. Yes.

17 Q. Did the arrest warrant say that he needed to get dressed?

18 A. It would have been a little bit demeaning to carry him in
19 his underwear or his sleeping attire to jail.

20 Q. So which was it, his underwear or his sleeping attire?

21 A. I'm not putting a definition on what the word "underwear"
22 or "sleeping attire," what the difference would be. I remember
23 he had -- he was not in --

24 Q. Take your time.

25 A. -- Fruit of the Looms with no T-shirt. That's what I

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Correa - cross

1 remember. I remember he had something on.

2 Q. Just a moment ago you testified that he was wearing
3 something.

4 A. Yes.

5 Q. Now, when I asked you why you couldn't just take him, you
6 said he had to get dressed. That's true?

7 A. Yes.

8 Q. You said he was wearing his underwear just a moment ago.

9 MS. PERRY: Objection.

10 THE COURT: Sustained.

11 MR. FINEMAN: I can ask the court reporter to read it
12 back?

13 THE COURT: You can save that for argument. Ask
14 questions.

15 Q. You are certain he was wearing underwear, not clothes?

16 A. Not street clothes.

17 Q. Was his chest bare?

18 A. I don't think so.

19 Q. Were his legs covered?

20 A. I don't remember. I don't think so. They may have been
21 long pajamas.

22 Q. They were covered or they weren't covered?

23 A. I don't remember.

24 Q. You don't remember.

25 THE COURT: Agent Correa, can you tell me whether or

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Correa - cross

1 not Mr. Alexander appeared to be just awakened or he appeared
2 to be alert?

3 THE WITNESS: No, he definitely appeared to be just
4 awakened.

5 Q. During that security sweep, was any contraband or gun
6 found?

7 A. No, sir.

8 Q. Where was Mr. Alexander taken during the security sweep?

9 A. Everybody was in the living room.

10 Q. Everybody? Who is everybody?

11 A. Family members.

12 Q. What family members?

13 A. There was his wife. I remember at least one teenager, at
14 least one dog.

15 Q. So the dog, the wife, the son, the teenager, everybody was
16 in the living room?

17 A. Yes.

18 Q. Was the wife under arrest?

19 A. No.

20 Q. Was the child under arrest?

21 A. No.

22 Q. I am not going to ask the next question.

23 Were these people permitted to walk around the house
24 while the security sweep was ongoing?

25 A. No.

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Correa - cross

1 Q. They were not?

2 A. No.

3 Q. They were not free to move around?

4 A. They were not.

5 Q. For the period of time that the security sweep was ongoing,
6 they were in custody?

7 MS. PERRY: Objection.

8 THE COURT: Sustained.

9 Q. Were they free to move around during the time the security
10 sweep was ongoing?

11 MS. PERRY: Asked and answered.

12 THE COURT: I will let him ask it again. Go ahead.

13 A. No, they were not.

14 Q. Based on what authority did you restrain their movement?

15 A. It was for everybody's safety involved. The security sweep
16 took no more than a few minutes a couple of minutes.

17 Q. How many minutes?

18 A. I'm not sure.

19 Q. Five minutes?

20 A. I'm not sure.

21 Q. What kind of house does Mr. Alexander live in?

22 A. From what I can recall, it was a ranch.

23 Q. One story?

24 A. A one-story house.

25 Q. Do you recall how many bedrooms?

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Correa - cross

1 A. I didn't go into the bedrooms, no.

2 Q. You stayed with Mr. Alexander the entire time the security
3 sweep was ongoing, yes?

4 A. Yes.

5 Q. But other people were wandering about his home?

6 MS. PERRY: Objection.

7 THE COURT: Other agents were doing the sweep, right.

8 THE WITNESS: Right.

9 Q. You testified earlier there was a uniformed officer, is
10 that true?

11 A. That's true.

12 Q. That uniformed officer was also in the home?

13 A. Yes.

14 Q. So you had a number of federal agents and a uniformed
15 police officer from Virginia in his home?

16 A. Yes.

17 Q. Was the uniformed officer from Virginia conducting a
18 security sweep?

19 A. I'm not sure.

20 Q. Was he under your command?

21 A. No.

22 Q. Did you have authority over that officer?

23 A. No.

24 Q. Did you order him to conduct a security sweep?

25 A. No.

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Correa - cross

1 Q. So as far as you know, he was in the home but you didn't
2 know what he was doing?

3 MS. PERRY: Objection.

4 A. I didn't know what he was doing, no.

5 Q. How long was the security sweep again?

6 A. I'm not sure. Your average sweep is the amount of time it
7 takes to walk throughout the house and make sure that other
8 people aren't there.

9 Q. Other people or property? Do they look for weapons or
10 other physical tangible items?

11 A. Only if they are in plain sight.

12 Q. So they are looking for that, though?

13 A. No. Well, if they come across that in plain sight. What
14 they are looking for is bodies or anything that maybe a danger.
15 So if you see a rifle in the doorway, it could be a concern.

16 Q. When the person is conducting a security sweep, they move
17 around the house to determine if there are any people or
18 weapons in the home that can threaten the agent, isn't that
19 correct?

20 A. Or anything else that would be of danger.

21 Q. Or anything else?

22 A. Yes.

23 Q. That's correct?

24 A. That's correct.

25 Q. So it is a search for people and tangible items, is that

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Correa - cross

1 correct?

2 MS. PERRY: Objection.

3 THE COURT: Sustained. Rephrase it.

4 Q. In other words, they were looking around the house?

5 A. Yes.

6 Q. During the security sweep, where are you?

7 A. I was in the living room.

8 Q. You testified earlier you were with the defendant and his
9 family?

10 A. Yes.

11 Q. Was anybody else with you, any other agents?

12 A. Yes.

13 Q. Is that when you advised my client of his Miranda rights?

14 A. No.

15 Q. That is not when you advised him of the Miranda rights?

16 A. No.

17 Q. At some point you advised my client of his Miranda rights,
18 that is what you testified earlier to, correct?

19 A. Correct.

20 Q. How long were you in his house at the point in time that
21 you advised him of his Miranda rights?

22 A. A few minutes.

23 Q. A few minutes. So how many minutes after the security
24 sweep had ceased?

25 A. It was right after the security sweep had ceased.

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Correa - cross

1 Q. You arrived at 6 o'clock. You testified the security sweep
2 took a couple of minutes. What is that, 6:02?

3 MS. PERRY: Objection.

4 THE COURT: Sustained.

5 Q. Agent, if you know, what time, approximately, was it in the
6 morning?

7 A. We arrived at the house at approximately 6:00 a.m.

8 Q. That is not my question. Approximately what time did you
9 advise him of his Miranda rights the first time?

10 A. It was a few minutes after the security sweep. I didn't
11 look at my watch.

12 Q. Were you wearing a watch that day?

13 A. Yes.

14 Q. Was it a digital watch or an analog watch?

15 A. Analog.

16 Q. Analog? Are you wearing that watch today?

17 A. I'm not sure if it was the same watch.

18 Q. Have you ever had any problems with your watch? Did you
19 have to have it repaired?

20 MS. PERRY: Objection.

21 THE COURT: What the heck. Go ahead, agent, answer
22 the question.

23 A. I couldn't recall if I had the watch repaired, any watch
24 repaired between now and then.

25 Q. Thank you. You testified that after you read him his

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Correa - cross

1 Miranda rights, he wanted to speak with you, is that true?

2 MS. PERRY: Objection to form.

3 THE COURT: Sustained as to the form.

4 Q. Isn't it true that you earlier testified that after you
5 read my client his Miranda rights, he wanted to speak with you?

6 MS. PERRY: Same objection.

7 THE COURT: Same ruling.

8 Q. Do you recall testifying earlier, when Ms. Perry was asking
9 you questions?

10 A. Do I recall that? Yes.

11 Q. Do you recall answering a question that Mr. Alexander spoke
12 with you after the administration of Miranda rights?

13 A. He did speak with me after.

14 Q. That would be after?

15 A. Yes.

16 Q. Was anybody else present when you advised him of his
17 Miranda rights?

18 A. There were people in the same room walking back and forth.

19 Q. Was anybody standing with you?

20 A. Seated at the table or standing with us? I don't think so.

21 Q. Were you seated at the table at the time you advised him or
22 were you standing?

23 A. I was seated at the table.

24 Q. Where was Mr. Alexander?

25 A. Sitting across from me.

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Correa - cross

1 Q. This was at the living room or the dining room?

2 A. The dining room.

3 Q. At that point was he alone or still with his family?

4 A. No, he was away from his family, who was apparently still
5 in the living room.

6 Q. Who was with the family?

7 A. I don't know. Other agents.

8 Q. So other agents were with the family in the living room?

9 Yes?

10 A. Well, I'm assuming that, because I was in the dining room
11 with Mr. Alexander.

12 Q. Do you know or do you not know, or are you just assuming?

13 A. Do I know definitively, no.

14 Q. You don't know?

15 A. No.

16 Q. At the conclusion of the security sweep, do you claim that
17 Mr. Alexander wanted to start talking to you pre-Miranda?

18 A. Yes.

19 Q. Yes?

20 A. Yes.

21 Q. What did he want to talk to you about?

22 A. Why I was there, what the nature of the charges were.

23 Q. At that point, that is when you decided that it was
24 necessary to advise him of Miranda?

25 A. Yes.

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Correa - cross

1 Q. At that point you had him sign a written waiver of his
2 rights?

3 A. No, sir.

4 Q. Why didn't you have him sign a written waiver of his rights
5 at that point?

6 A. I didn't have a written waiver with me.

7 Q. Did you have any paperwork with you that day?

8 A. No. I may have had the warrant in hand.

9 Q. But nothing else?

10 A. No.

11 Q. You had known what the case was about because you had
12 discussed it with Agent Rosenblatt, correct?

13 A. Generally what the case was about.

14 Q. Did he start talking, or are you the person who asked him
15 if he wanted to talk first? Who was the first person who
16 wanted to discuss the case?

17 A. When I described the charges to him, he said, I know what
18 this is about, and started telling the story about a check.

19 THE COURT: This is after Miranda?

20 THE WITNESS: After Miranda.

21 Q. Do you recall it happening differently, that you advised
22 him that he was arrested and at that point you told him what he
23 was being arrested for, and then you asked him if he wanted to
24 answer questions?

25 A. No, sir.

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Correa - cross

1 Q. That's not how it went?

2 A. No.

3 Q. Do you recall generating a typed memorandum for this case?

4 A. Yes.

5 MR. FINEMAN: May I approach the witness, your Honor?

6 THE COURT: You may.

7 Q. Do you recognize this document?

8 A. Yes.

9 Q. What is this document?

10 A. It is a memo that I handed to the case agent detailing my
11 contact with Mr. Alexander.

12 Q. Is it an original or a copy?

13 A. This is a copy.

14 Q. Is it a fair and accurate representation of the original?

15 A. It is.

16 Q. To the best of your knowledge, is it altered in any way?

17 A. No.

18 MR. FINEMAN: Your Honor, at this time I would like to
19 move that document into evidence as defense A.

20 MS. PERRY: No objection.

21 THE COURT: Defense A is received.

22 (Defendant's Exhibit A received in evidence)

23 Q. Looking at the document defense A, your memorandum --

24 MS. PERRY: I'm sorry. For your Honor's sake, it is
25 3501-D. I am sure yo know that.

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Correa - cross

1 THE COURT: I don't have the 3500 material, but I have
2 a copy from the exhibits.

3 MS. PERRY: I'm sorry, your Honor. I did produce the
4 3500 yesterday. I can give you another copy.

5 THE COURT: That's fine. As I said, I have it. I
6 have it from Mr. Fineman's motion papers. Go ahead, Mr.
7 Fineman.

8 BY MR. FINEMAN:

9 Q. Looking at the third paragraph of your memorandum, you
10 wrote, "After a security sweep of the residence, SA Correa
11 advised Nathaniel Alexander of his Miranda rights. Nathaniel
12 Alexander waived his rights and stated he would answer
13 questions. After SA3 had informed Nathaniel Alexander that he
14 was being investigated for bank fraud, Nathaniel Alexander
15 indicated the agents had permission to look through the
16 residence for evidence of financial fraud."

17 Is that what is written in your memorandum?

18 A. It is.

19 Q. That memorandum, when did you write this memorandum?

20 A. The date on the memorandum is March 17th.

21 Q. Was that closer in time to the date of arrest than today or
22 further away from the arrest than today?

23 A. I'm sorry?

24 Q. Was that more recent to the arrest when you wrote this?

25 A. It was after the arrest. I'm not sure I understand. It

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Correa - cross

1 was after the arrest.

2 Q. Was it sooner after the arrest than today? Is today
3 further away from the date of arrest, is what I am asking you.

4 A. Oh, yes.

5 Q. Your recollection, was it better then or is it better now?

6 A. Was it better then? Recollection on?

7 Q. On the arrest.

8 A. I don't really understand.

9 Q. Would you say that you would have recalled the
10 circumstances and events that occurred on the day of arrest
11 better when you wrote the memorandum in March than today, with
12 the passage of time?

13 A. One would assume that the further away you get from an
14 incident, the less memory you have of it, yes.

15 Q. Prior to testifying here today, did you review your notes?

16 A. Prior to testifying today?

17 Q. Yes.

18 A. Yes.

19 Q. Did you read this memorandum?

20 A. Yes.

21 Q. What is in this memorandum is accurate?

22 A. Yes. Well, the -- yes.

23 Q. What were you about to say?

24 A. I thought you were referring to specifically the third
25 paragraph.

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Correa - cross

1 Q. Excuse me?

2 A. I thought you were referring specifically to the third
3 paragraph.

4 Q. Yes. The third paragraph, is that accurate?

5 A. Yes.

6 Q. So after you informed him that he was being investigated
7 for bank fraud, he indicated that you had permission to look
8 through the residence for any evidence of financial fraud?

9 A. He did.

10 Q. But you testified earlier that you asked him specifically
11 where can we find it, and he told you in a briefcase.

12 A. Exactly.

13 Q. But you didn't write that you looked in a briefcase. You
14 wrote you looked through the residence.

15 MS. PERRY: Objection, your Honor. This is argument.

16 THE COURT: It's OK. Go ahead. Overruled.

17 A. No. I wrote that agents had permission to look through the
18 residence.

19 Q. OK. Then the next paragraph, read the next paragraph,
20 paragraph 4.

21 A. "After a cursory search of the residence, Nathaniel
22 Alexander was taken to the RAC Norfolk ICE office for
23 processing and questioning."

24 Q. Does that say after a search of a briefcase?

25 A. No, sir.

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Correa - cross

1 Q. So you searched his residence?

2 A. "Cursory search" is a term --

3 Q. Were you talking about the security sweep or the search?

4 A. No, I'm not referring to the security sweep in this
5 sentence.

6 Q. So you are talking about the search?

7 A. It was just a term that you write when you say that the
8 search was not in detail.

9 Q. When you became a federal agent, were you trained to
10 generate paperwork?

11 A. Yes, sir.

12 Q. Were you trained the value of generating accurate
13 paperwork?

14 A. Yes, sir.

15 Q. So this is inaccurate?

16 A. I don't believe so, sir.

17 Q. So you did search the residence then, is that what you are
18 saying?

19 A. I'm not sure what you are asking.

20 Q. I'm asking you if you searched my client's residence or if
21 you merely searched a briefcase.

22 A. Someone had to go get the briefcase and look for it. And
23 then they brought me the briefcase and I looked through the
24 briefcase.

25 THE COURT: Both the briefcase and the residence?

67brale2

Correa - cross

1 THE WITNESS: Yes, sir.

2 Q. Who went to get it?

3 A. Another agent.

4 Q. Do you know who?

5 A. No.

6 Q. Was he told where to go?

7 A. Yes.

8 THE COURT: Mr. Fineman, help me out here. I am
9 reading your notice of motion. I don't see a motion to
10 suppress the contents of the briefcase, I so I am not sure why
11 we are talking about this.

12 MR. FINEMAN: Credibility, your Honor.

13 THE COURT: OK. Go ahead.

14 Q. The person was told where the briefcase would be, then?

15 A. Yes.

16 Q. They didn't have to search through the residence to find
17 it, they knew exactly where to go, right?

18 A. Yes.

19 Q. And they went and brought it to you, or did they look
20 through it?

21 A. No, they brought it to me.

22 Q. What exactly is evidence of financial fraud?

23 A. He was speaking about a certain check and certain company,
24 so I was looking specifically for those names, having an idea
25 that those companies or that check might be fraudulent.

67brale2

Correa - cross

1 Q. You were looking for a specific check in his briefcase?

2 A. Or a check with his company name on it, because he was
3 speaking about his company.

4 Q. So you were looking more generally for documents with a
5 company name on it?

6 A. It is hard to get into this without getting into the nature
7 of the conversation, but he was speaking of a specific check.

8 Q. He was speaking of a specific check, and you wanted to look
9 for that check?

10 MS. PERRY: Your Honor, I object to this as being way
11 outside the scope.

12 THE COURT: I am not sure what this has to do with
13 credibility at this point.

14 MR. FINEMAN: Your Honor, first, this memorandum was
15 generated well before my motion was made. It was generated at
16 a time closer in time to the arrest. The agent has testified
17 significantly differently from this paperwork.

18 THE COURT: That is a matter of debate. The agent is
19 testifying to follow-up he did based on statements your client
20 made. You are trying to suppress the statements. I get that.

21 MR. FINEMAN: Yes.

22 THE COURT: Since you are not looking to suppress the
23 fruits of the search of the briefcase, I'm not sure what
24 difference it makes as to what check was being looked for and
25 found, and so forth.

67brale2

Correa - cross

1 MR. FINEMAN: Your Honor, the importance is not what
2 check was being looked for, because no check was being looked
3 for. This was a tactic employed for coercion. There was no
4 permission to search the house.

5 THE COURT: But you haven't moved to suppress the
6 search of the house, so I don't understand why we are going
7 through this now.

8 MR. FINEMAN: The conduct of searching the home while
9 he is in custody and his family in custody in another room is
10 coercive conduct.

11 THE COURT: Then the family can sue. Lord knows, you
12 are not shy about making a motion in this case. You haven't
13 moved to suppress the contents of the briefcase, so I don't
14 know why we are going through this. The coercive conduct and
15 family, you might want to check the case law about what people
16 are allowed to do on security sweeps. But I don't understand
17 what that has to do with anything either.

18 MR. FINEMAN: It goes towards the voluntariness of the
19 statement.

20 THE COURT: How is that?

21 MR. FINEMAN: If the law enforcement conduct is
22 coercive, then there couldn't be a valid waiver of Miranda
23 rights.

24 THE COURT: Then either ask about the family or move
25 on. I don't understand why we are worried about what check was

67brale2

Correa - cross

1 found in what briefcase.

2 MR. FINEMAN: I will move on then.

3 Q. In your memorandum you state that after a cursory search of
4 the residence, Nathaniel Alexander was taken to the RAIC
5 Norfolk ICE office for processing and questioning. Is that
6 what the memorandum states?

7 A. Yes, sir.

8 Q. Prior to that paragraph in the memorandum, do you mention
9 that any questioning had taken place in his home?

10 A. No.

11 Q. So the memorandum is devoid of any information about
12 questioning in his home?

13 A. Correct, other than stating he would answer questions.

14 Q. Once you arrived back at the ICE office in Virginia, you
15 testified earlier that you advised him of his Miranda rights
16 again, is that true?

17 A. That's true.

18 Q. You did this verbally or using a document?

19 A. Verbally.

20 Q. But you were in the federal building at that point?

21 A. Correct.

22 Q. They do have waivers in that building, don't they?

23 A. I couldn't get my hands on a written waiver at that time.

24 Q. Were you alone in the federal building?

25 A. No, sir.

67brale2

Correa - cross

1 Q. Were there other agents there?

2 A. There was one other agent there that I knew of.

3 Q. In the entire federal building?

4 A. In the RAC office. It is a suboffice.

5 Q. There was another person there in that office?

6 A. Yes.

7 Q. Is that person an agent who works in Virginia or someone
8 from New York?

9 A. Virginia.

10 Q. But you didn't ask that person to get you a waiver?

11 A. I believe I did, yes.

12 Q. You did?

13 A. Yes.

14 Q. But they decided not to?

15 A. They were running back and forth.

16 Q. So they were too busy?

17 MS. PERRY: Can the answer be obtained?

18 THE COURT: Let him answer, and then you can ask a
19 follow-up.

20 A. Basically, I was put in the processing room to process him.
21 Why he was going back and forth, I believe he had a court date
22 that he was running late for. I was asking for things like
23 fingerprint cards, pedigree paperwork, including Miranda rights
24 waiver paperwork and other things. I don't remember exactly
25 what the situation was, but one wasn't available to me at that

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Correa - cross

1 time.

2 Q. If you know, approximately how many people work in that
3 office?

4 A. I don't know.

5 Q. You don't know?

6 A. No.

7 Q. The agents that you were with that morning at Mr.
8 Alexander's home, were they all from Virginia?

9 A. I don't know.

10 Q. Before you went to my client's home at 6 o'clock in the
11 morning, is that the first place you went in the morning, or
12 did you go somewhere else?

13 A. Yes. We all met, several cars met in an open parking lot
14 near the home.

15 Q. Where were you coming from?

16 A. I don't remember. I'm assuming it was -- I don't remember.
17 It may have been the hotel.

18 Q. Did you go to Virginia the day before?

19 A. Yes.

20 Q. Presumably you stayed in a hotel?

21 A. Yes.

22 Q. When you arrived in Virginia the day before, did you meet
23 with anybody from the Virginia office?

24 A. Yes.

25 Q. Do you recall who you met with?

67brale2

Correa - cross

1 A. I can't remember his name. There were two agents. I met
2 with two agents. One may have been Pete.

3 Q. Where did you meet them?

4 A. Where did we meet them? They picked us up at the airport.

5 Q. Where did they take you?

6 A. I don't remember.

7 Q. You don't recall?

8 A. No.

9 Q. Do you recall what time you arrived in Virginia that day?

10 A. I remember it was nighttime.

11 Q. Nighttime in that it was late in the evening? Can you be
12 more specific?

13 A. Late in the evening. It was after sundown, late in the
14 evening.

15 Q. That was on February 8th?

16 A. That was on February 8th.

17 Q. And you did meet with some agents from Virginia at that
18 point?

19 A. Yes.

20 Q. You don't know where they took you?

21 A. I don't remember.

22 Q. Did you discuss the arrest with them the day before in
23 terms of planning?

24 A. Not that I can recall. Not that I can recall. I know they
25 were going to pick us up, someone was going to pick us up, and

67brale2

Correa - cross

1 we were going to go to the staging location in the morning.

2 Q. You were going to go straight to the location in the
3 morning?

4 A. Staging location.

5 Q. Staging location?

6 A. Yes.

7 Q. Where was the staging location?

8 A. An open parking lot somewhere.

9 Q. How far from my client's home?

10 A. I don't remember. It was a short drive.

11 Q. Who decided on the staging location?

12 A. One of the Virginia agents.

13 Q. So you don't know how many people work in the Virginia
14 office?

15 A. No.

16 MS. PERRY: Objection.

17 THE COURT: He said no.

18 MS. PERRY: Asked and answered.

19 Q. Is it your testimony that when you were there with my
20 client you were there with only one other person?

21 A. In?

22 Q. In the ICE office, the processing room.

23 A. In the ICE office I remember only one other person, yes.

24 Q. When you left my client's home and went back to the ICE
25 office, did you drive him by yourself?

67brale2

Correa - cross

1 A. No. I was in the backseat and there was an agent driving.

2 Q. That agent who drove you, that was the person who
3 refused -- excuse me. Let me rephrase that. The agent who
4 drove you back to the ICE headquarters, for lack of a better
5 word, that was the agent running back and forth that couldn't
6 assist you?

7 A. I believe it was the same, yes.

8 Q. It was the same person?

9 A. I believe so.

10 Q. Do you recall what he was doing that he couldn't assist
11 you?

12 MS. PERRY: Objection to the form.

13 THE COURT: I think the testimony was he had a court
14 date.

15 A. I'm not sure. I believe they were late for a court date.

16 Q. They? Who is they?

17 A. I'm speaking in general. I misspoke. He was late for a
18 court date.

19 Q. Are there secretarial staff at that office?

20 A. I didn't see any that morning, no.

21 Q. At some point somebody went to get you a copy of the
22 indictment, isn't that correct?

23 A. Correct.

24 Q. Who was that person?

25 A. The same agent.

67brale2

Correa - cross

1 Q. The same agent that we have been discussing?

2 A. Yes.

3 Q. When he got you a copy of the indictment, he also gave you
4 a copy of the Miranda waiver?

5 A. No.

6 Q. No, he did not?

7 A. No.

8 Q. Did you ask him for a copy of the Miranda waiver before or
9 after you asked him for the indictment?

10 A. It would have been before.

11 Q. But he brought you the indictment first?

12 A. At some point I specifically asked him for a copy of the
13 indictment.

14 Q. Hadn't you specifically asked for a Miranda waiver early?

15 A. Yes.

16 Q. But he didn't bring it?

17 A. No.

18 Q. Did anybody else witness your second administration of
19 Miranda to my client?

20 A. No.

21 Q. So it was just you?

22 A. Yes, sir.

23 Q. You testified earlier that some time had passed and that's
24 why you felt it necessary to readvise him. Is that what you
25 said earlier?

67brale2

Correa - cross

1 A. Correct.

2 Q. You testified earlier that you had been in law enforcement
3 for many years. Is that true?

4 A. Yes, sir.

5 Q. You worked for the New York State highway patrol or state
6 police?

7 A. Yes, sir.

8 Q. You worked for the Bronx County district attorney's office?

9 A. Yes, sir.

10 Q. You said that you had arrested people before and on at
11 least a hundred occasions advised them of Miranda?

12 A. Correct.

13 Q. Has anyone ever told you that at some point Miranda
14 expires?

15 A. Yes. Well, not that it expires, but if you stop talking
16 specifically about the charges and want to continue in another
17 conversation, it is good practice to advise again.

18 Q. So if you wanted to reinitiate the conversation, you should
19 offer Miranda warnings again, is that what you are saying?

20 A. Correct.

21 Q. Then you wanted to continue the conversation at the ICE
22 headquarters in Virginia?

23 A. Correct.

24 Q. You couldn't wait until you got the physical Miranda
25 document, it was that important that you continue without one?

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Correa - cross

1 A. At some point -- he was being very cooperative. There was
2 rapport going on. I wanted to get more details of the story.

3 Q. But you just testified that you had ceased talking to him
4 for an extended period of time.

5 MS. PERRY: Objection.

6 THE COURT: Rephrase, please.

7 Q. Is it true that you stopped talking to him for an extended
8 period of time?

9 A. It wasn't that we stopped talking. It was that we were
10 talking about other things. We were looking for Riddick,
11 basically, and we were doing the processing.

12 Q. But there was a continuous conversation?

13 A. Was there a time period where I stepped away and not talked
14 to him? No, sir. I was with him the whole time.

15 Q. You testified earlier that it had been a long time and
16 therefore you needed to re-Mirandize him.

17 A. It had been a long time since we talked about his specific
18 charges.

19 Q. But you testified that he was helping you look for Mr.
20 Riddick, is that true?

21 A. That's correct.

22 Q. Directing your attention to Defense Exhibit A, your
23 typewritten statement, is that information included in your
24 statement, in your typewritten memorandum?

25 A. On the search for Riddick?

67brale2

Correa - cross

1 Q. Excuse me?

2 A. The information on search for Riddick?

3 Q. Yes.

4 A. No, it is not.

5 Q. So this document is devoid of that information?

6 A. Correct.

7 Q. Looking at that document one more time, where it says at
8 the fifth paragraph down, "At this time SA Correa again advised
9 Nathaniel Alexander of his Miranda rights," you are talking
10 about the verbal rights we have been just been discussing for
11 the past few minutes?

12 A. Correct.

13 Q. Earlier, during your direct examination, you were asked a
14 number of times about whether or not Mr. Alexander was in
15 handcuffs. At some point that morning he was in handcuffs?

16 A. Correct.

17 Q. Is it true that when you arrived at his home and you
18 advised him that you were there with an arrest warrant, he was
19 not free to leave?

20 A. That's correct.

21 Q. Back to talking about his continued conversation with you
22 at the ICE headquarters. You had been having a conversation
23 with him about finding Riddick.

24 A. Yes.

25 Q. He had been very cooperative in helping you find, trying to

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Correa - cross

1 help you find Riddick?

2 A. Yes.

3 Q. Did you actually find Riddick through his help?

4 A. Yes.

5 Q. While you were going through that exercise of trying to
6 locate Stephen Riddick, did the conversation cease? Did you
7 just stop talking?

8 A. About anything?

9 Q. About anything.

10 A. No.

11 Q. So he had been helping you do your job in terms of finding
12 Mr. Riddick?

13 A. Yes, sir.

14 Q. Was there anything that would have indicated that he was
15 about to stop cooperating?

16 A. None whatsoever.

17 Q. And you felt compelled to Mirandize him a second time?

18 A. Yes, sir.

19 Q. But nobody besides you was present?

20 A. No.

21 Q. And there is no document to show that he was actually
22 Mirandized a second time?

23 A. No.

24 Q. And there is no document to show he was Mirandized the
25 first time?

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Correa - cross

1 A. No.

2 Q. And nobody else was present when he was Mirandized the
3 first time, to your recollection?4 A. Well, there were people in the same room. There was no one
5 sitting down next to us.6 Q. When you left my client's home on your way back to the ICE
7 headquarters, did he have a cell phone with him?

8 A. Did he have his cell phone with him?

9 Q. Yes.

10 A. No.

11 Q. But once he was in your custody at the ICE headquarters, at
12 some point he did get his cell phone?

13 A. Yes.

14 Q. How did he get his cell phone?

15 A. I'm not sure. I don't recall. Apparently, someone brought
16 it in. I know that when we were in the car he wanted his
17 contact numbers from his cell phone.18 Q. Did you promise anything in return for his help in finding
19 Mr. Riddick?

20 A. No.

21 Q. What time was his cell phone procured?

22 A. I'm not sure.

23 Q. Do you know what time he started making phone calls on his
24 cell phone?

25 A. No.

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Correa - cross

1 Q. What time was it that you arrived at the federal building?

2 A. I'm not sure.

3 Q. How long were you in my client's home?

4 A. I would give a rough estimate of 20, 30 minutes.

5 Q. How long did it take to travel from his home to the federal
6 building?

7 A. I don't know. It wasn't a very long ride, but it wasn't
8 around the corner either. I don't remember.

9 Q. At some point you decided to move him from the processing
10 room to a conference room, is that true?

11 A. Correct.

12 Q. At what time did you move him from the processing room to
13 the conference room?

14 A. I don't remember.

15 Q. Were there any other agents in the building at that time?

16 A. The same agent that was there before. Peter was in the
17 conference room with us.

18 Q. Pete was in the conference room?

19 A. Pete.

20 Q. Do you know when Pete arrived at the federal building?

21 A. It may have been Pete was with me the whole time. Pete may
22 have been the driver.

23 Q. Pete may have been the driver?

24 A. Yes.

25 Q. So it might have been Pete the whole time, even the agent

67brale2

Correa - cross

1 we were talking about before that didn't get you that Miranda
2 warning?

3 A. Yes.

4 Q. But you're not sure?

5 A. I'm not sure.

6 Q. I would like to direct your attention to the document in
7 evidence which is Government's 1, I believe, the Miranda
8 waiver.

9 A. Yes, sir.

10 Q. Eventually, you got ahold of this document, right?

11 A. Yes.

12 Q. Was it blank or was there information written in the spaces
13 provided for writing?

14 A. No. It was originally blank.

15 Q. It was what?

16 A. Originally blank.

17 Q. It was originally blank. So who filled out that
18 information?

19 A. The hours and the dates?

20 Q. Yes.

21 A. I don't know.

22 Q. Was Mr. Alexander your prisoner? Were you the one in
23 charge of him from the moment you arrested him to the point you
24 got him to the conference room?

25 A. I was the one escorting him.

67brale2

Correa - cross

1 Q. Were you the person sent to get him from New York?

2 A. Yes, sir.

3 Q. So he was your prisoner?

4 A. You could say that, yes.

5 Q. You had been talking to him the whole morning, yes?

6 A. Correct.

7 Q. You had Mirandized him twice before?

8 A. Correct.

9 Q. Once you get into the conference room, you get ahold of
10 this waiver?

11 A. Yes.

12 Q. How do you get ahold of the waiver?

13 A. I don't remember if I had it in hand before I went in, but
14 when we sat down, the first thing we did was go through the
15 waiver form.

16 Q. It was definitely blank when you got it?

17 A. Yes.

18 Q. But you didn't fill it out?

19 A. Not all of it, no.

20 Q. What did you fill out?

21 A. That's my signature.

22 Q. Other than your signature, you didn't write anything else
23 on this document?

24 A. I don't think so.

25 Q. That is not your handwriting where it says, "I was taken

67brale2

Correa - cross

1 into custody at 6:00 a.m."?

2 THE COURT: Just for the record, it is the 0600 that
3 is in handwriting.

4 MR. FINEMAN: I apologize. Thank you.

5 A. I don't think so.

6 Q. It is not your handwriting where it says on 02 slash 09
7 slash 2006?

8 A. No, I don't think so.

9 Q. And that is not your handwriting where it says 0900 or
10 0930?

11 A. I don't think so.

12 Q. That is not your initial?

13 A. Either one, I don't know, I don't think so.

14 Q. You don't think so or it's not?

15 A. I'm not sure. It doesn't look like my initial at all.

16 Q. You initialed things in the past outside of your capacity
17 as a law enforcement officer?

18 A. Yes.

19 Q. Has your initial ever looked like this?

20 A. No.

21 Q. But you're not sure if this is it?

22 A. I don't think so.

23 Q. Can you commit that it is not your initial? Can you commit
24 to that?

25 A. It does not look like my initial, no.

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Correa - cross

1 Q. I didn't ask you if it looked like it.

2 MS. PERRY: Objection, your Honor. He has answered.

3 Q. Is it your initial or isn't it your initial?

4 THE COURT: One more try. Go ahead.

5 A. I'm sorry?

6 Q. Is it your initial or is it not your initial?

7 A. I don't think it's my initial.

8 Q. So you signed this document at some point?

9 A. Correct.

10 Q. Was it blank or did it have that information filled in when
11 you signed this?

12 A. It would have to be afterward, because I signed it as a
13 witness.

14 Q. So the information would have been written into the
15 document before you signed it?

16 A. Well, I am witness of the fact that he printed his name and
17 signed it and that it was written on this date and time. So
18 apparently it was written afterward.

19 Q. Say that again.

20 A. Apparently I signed it afterward.

21 Q. I am not asking if you apparently. Do you remember if you
22 signed it while it was blank or if there was information on the
23 document?

24 A. No, sir. I wouldn't sign it while it was blank.

25 Q. You wouldn't sign it while it was blank. So you would have

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Correa - cross

1 read the information on the document?

2 A. That's correct.

3 Q. You would have seen that the time was crossed off from
4 sometime at 9:00 or after and changed to 8:30?

5 A. I don't remember the changing of the time at all.

6 Q. You don't remember the time being changed?

7 A. No, sir.

8 Q. So it is possible that at the time this was executed the
9 time was 0930 or 0900?

10 A. No. What looks like happened was an initial time was put
11 in and then it was agreed that that was not the correct time
12 and the correct time was put underneath.

13 Q. It was agreed by whom?

14 A. Whoever those initials are.

15 Q. You don't know who those initials belong to?

16 A. No.

17 Q. Let me ask you another question. After my client signed
18 this document, did you ever lose possession of it?

19 A. No.

20 Q. It was always in your possession?

21 A. Yes.

22 Q. Somebody couldn't have taken it from you and altered it
23 afterwards?

24 A. Could someone have taken the document and altered it
25 afterwards?

67brale2

Correa - cross

1 Q. Yes.

2 A. I don't remember if the document was in my possession after
3 the interview.

4 Q. You just said that it was.

5 A. You asked me during the interview.

6 Q. After the interview.

7 A. I don't remember where the document was after the
8 interview.9 Q. This document made its way back to New York, isn't that
10 correct?

11 A. That's correct.

12 Q. How did it make its way back to New York?

13 A. I don't remember.

14 Q. You don't remember how it got back to New York?

15 A. No, sir.

16 Q. Did you bring it back to New York?

17 A. I don't recall bringing it back to New York.

18 Q. You don't remember?

19 A. No.

20 Q. Did you come back to New York?

21 A. Yes, sir.

22 Q. Did you bring him back to New York?

23 A. No, sir.

24 Q. But you brought paperwork with you to New York?

25 A. I don't know if I brought paperwork related to this case

67brale2

Correa - cross

1 back to New York.

2 Q. You don't know?

3 A. No.

4 Q. Let me ask you another question.

5 MR. FINEMAN: May I approach the witness, your Honor?

6 THE COURT: You may.

7 Q. Do you recognize this document? It is a two-page document.

8 A. No.

9 Q. You do not?

10 A. I do not.

11 Q. Could I have that back.

12 MS. PERRY: Your Honor, it is 3501-E and F.

13 THE COURT: If you have an extra set. Did you drop it
14 off by hand, Ms. Perry?

15 MS. PERRY: I did, your Honor, yesterday.

16 MR. FINEMAN: Your Honor, I can give you this one. I
17 have an extra one.

18 THE COURT: Thank you very much.

19 Q. I am going to give you back my other copy.

20 MR. FINEMAN: May I approach, please?

21 THE COURT: You may.

22 Q. It is your testimony that you don't recognize what that is?

23 A. No, sir.

24 Q. Does it look like your handwriting?

25 A. No, not at all.

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Correa - cross

1 Q. It doesn't?

2 A. No.

3 Q. So it is not your note?

4 A. No.

5 Q. OK. I will take it back. Do you remember filling out a
6 Federal Bureau of Investigation United States Department of
7 Justice fingerprint request document?

8 A. Fingerprint request?

9 Q. A document related to fingerprints when you took my
10 client's fingerprints.

11 A. I remember filling out the fingerprint cards.

12 Q. Let me show you another two documents marked -- this one is
13 not marked at all. This one is marked 3501-B.

14 MR. FINEMAN: May I approach?

15 THE COURT: You may.

16 Q. Is this your handwriting?

17 A. Yes, sir.

18 Q. That is your handwriting. But the earlier document I
19 showed you isn't?

20 THE COURT: 3501-E for the record?

21 MR. FINEMAN: Yes, 3501-E.

22 A. No, it is not.

23 MR. FINEMAN: Can I ask to clarify, your Honor? If it
24 is helpful to Mr. Fineman, those are my notes.

25 THE COURT: 3501-E?

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Correa - cross

1 MS. PERRY: And F.

2 THE COURT: E and F are your notes?

3 MS. PERRY: Yes.

4 Q. I will take that.

5 MS. PERRY: Sorry to interrupt. I would like to hand
6 up a complete set of 3500 to your Honor.

7 THE COURT: Thank you.

8 Q. Do you recall writing out a one-page statement?

9 A. Yes, sir.

10 Q. For my client to sign?

11 A. I'm sorry?

12 Q. That you wanted my client to sign?

13 A. Yes, sir.

14 MR. FINEMAN: May I approach, your Honor?

15 THE COURT: You may.

16 MR. FINEMAN: For the record, this is 3501-C.

17 Q. Do you recognize that document?

18 A. Yes.

19 Q. Whose handwriting is that document?

20 A. That is my handwriting.

21 Q. What is this document?

22 A. This is what I was writing down as he was speaking, as Mr.
23 Nathaniel was speaking.

24 THE COURT: This is where?

25 THE WITNESS: In the conference room.

67brale2

Correa - cross

1 Q. Is this an original or a copy?

2 A. This is a copy.

3 Q. Is it a fair and accurate representation of the original?

4 A. Yes.

5 MR. FINEMAN: I would like to move that into evidence
6 as defense C.

7 MS. PERRY: No objection.

8 THE COURT: Defense 3501-C is defense B, I think,
9 right?

10 MR. FINEMAN: Didn't I move something in before as B?

11 THE COURT: I only have A as being entered.

12 MR. FINEMAN: Then it would be B. I think I tried to
13 move something in and didn't.

14 THE COURT: I think you were probably going to. I
15 don't think anything was marked even for identification as B.

16 MR. FINEMAN: No.

17 THE COURT: All right.

18 (Defendant's Exhibit B received in evidence)

19 Q. Is that your handwriting?

20 A. Yes, it is.

21 Q. Is that entire document your handwriting or is anybody
22 else's handwriting on it?

23 A. No. It's all -- well, except for the at the very top,
24 someone wrote the name Alexander on top. That is not mine.

25 Q. Who wrote that?

67brale2

Correa - cross

1 A. I don't know.

2 Q. You don't know?

3 A. No.

4 Q. Was it there when you generated this document?

5 A. No.

6 Q. Where did you possess this record?

7 A. After I wrote it?

8 Q. Yes.

9 A. When was the next time?

10 Q. No. Did you keep it as your record or did you just hand it
11 off to someone?

12 A. I don't know. I may have. It may have been included with
13 some of the other paperwork which I'm not sure if I physically
14 brought back from Virginia.

15 Q. It might have been physically included in some other
16 paperwork that you are not sure ever left Virginia?

17 A. Yes, sir. What happens is it may have been put in a file.
18 I'm not sure. I'm just speculating. It may have been put in a
19 file at the Virginia office as things were being filled out.
20 I'm not sure if I physically took that paperwork with me to New
21 York or it was sent to New York. I'm not sure.

22 Q. This is a New York case?

23 A. Yes, sir.

24 Q. The defendant is charged here in the Southern District?

25 A. Correct.

67brale2

Correa - cross

1 Q. You work in the Southern District?

2 A. Yes, sir.

3 Q. Did you possess that document in your office at some time
4 before today?

5 A. Yes.

6 Q. Where was that document?

7 A. I remember referring to this document when I was writing
8 the typed statement.

9 Q. Did there come a time recently that you provided the
10 government with this document?

11 THE COURT: Forget recently. Did there come a time
12 you provided it to the U.S. Attorney's office?

13 MR. FINEMAN: Yes. Thank you, your Honor.

14 THE WITNESS: I remember providing it to the case
15 agent.

16 Q. To the case agent?

17 A. Yes, sir.

18 MR. FINEMAN: Your Honor, may we approach?

19 THE COURT: Sure.

20 (At the sidebar)

21 THE COURT: Mr. Fineman?

22 MR. FINEMAN: The agent has been here the entire
23 hearing. If I wanted to call him as a rebuttal witness now, he
24 is tainted. He has heard the person's testimony.

25 THE COURT: I am not sure what the purpose of the

67brale2

Correa - cross

1 sidebar is, since you have now said it loud enough for the
2 whole courtroom to hear. He is the case agent. He is allowed
3 to be around. Also, what is the mystery of the handwriting at
4 the top "Alexander"? What is the concern here that you have?

5 MR. FINEMAN: I want to establish that the document
6 had never been altered, that that is his paperwork.

7 THE COURT: He said that.

8 MR. FINEMAN: I guess we will just move on then.

9 THE COURT: What would be the good-faith basis to
10 believe that the document has been altered?

11 MR. FINEMAN: I don't think it has been altered. I
12 want to establish that it hasn't been.

13 THE COURT: You can ask the agent if it is his notes.
14 He said that his handwriting at the top is not his. I'm not
15 sure what it matters whose handwriting it is. Do you have a
16 theory as to why that matters?

17 MR. FINEMAN: No.

18 THE COURT: All right. By the way, Mr. Fineman, how
19 much longer do you think you are going to be with the witness?

20 MR. FINEMAN: It is getting towards the end.

21 THE COURT: Thanks.

22 MS. PERRY: Just so your Honor is aware, we have just
23 one more witness.

24 THE COURT: OK. I have something on this afternoon,
25 and then we have to be conscious of the lunch break for Tom

67brale2

Correa - cross

1 here.

2 MS. PERRY: He is in from Virginia.

3 THE COURT: We will get him done today. We will work
4 around the other thing.

5 (In open court)

6 Q. You testified earlier that you used that document, that
7 handwritten statement in preparing your typewritten memorandum?

8 A. Yes, sir.

9 Q. Would you please refer back to your typewritten memorandum.
10 What was the date at the top of that? The first paragraph,
11 what is the date?

12 A. The first paragraph is February 8, 2006.

13 Q. But that is incorrect?

14 A. That's incorrect.

15 Q. You did not arrest him on February 8, 2006?

16 A. No, sir. It was February 9th.

17 Q. The document that is handwritten has the date on it?

18 A. Yes, sir.

19 Q. In this typewritten memorandum, 3501-D for the record,
20 where do you write that you had my client sign a written
21 Miranda waiver form? It is not there, is it?

22 A. No, sir.

23 Q. So you specifically write in your typed memorandum about
24 two Miranda warnings that are not at all documented, but the
25 one Miranda warning that is documented you don't even mention

67brale2

Correa - cross

1 in your memorandum?

2 A. That's correct, sir.

3 Q. Isn't it a fact that in your memorandum, when you said that
4 you again advised him of Miranda when returned to the federal
5 building, you were not talking about oral Miranda, you were
6 talking about this signed waiver?

7 A. No, sir.

8 Q. Do you specifically recall advising him of his Miranda
9 rights three times, twice orally and once written?

10 A. Oh, yes.

11 Q. You testified earlier there came a time that you handed
12 over all your paperwork on this arrest to Agent Rosenblatt, is
13 that true?

14 A. That's true.

15 Q. You don't recall that that paperwork followed you from
16 Virginia or if you brought it with you?

17 A. That's correct.

18 Q. So you remember advising my client of his Miranda rights
19 three distinct times but you don't even remember if you brought
20 your notes home with you?

21 A. Yes, sir.

22 Q. That would be correct?

23 A. That's correct.

24 Q. In any event, you testified you wouldn't sign a document
25 that had not been fully completed, is that true?

67brale2

Correa - cross

1 A. That's true.

2 Q. So this change from 9:00 or 9:30 to 8:30 would have been
3 present at the time you signed the document?

4 A. I don't remember the changing of the document.

5 Q. You don't remember a change being made to it?

6 A. No, sir.

7 Q. But you don't know if the document could have been altered
8 outside of your possession?

9 A. I'm not sure that I physically had the document with me
10 from the trip to Virginia to here.

11 Q. It may have been in Virginia and some agent from Virginia
12 could have just picked it up and changed the time?

13 A. I'm not suggesting that, sir. I don't remember the
14 changing of the document when we were at the table.

15 Q. But you see that it is changed now?

16 A. Yes.

17 Q. Are you saying it was changed after you came back to New
18 York?

19 A. No, sir. It was not changed.

20 Q. Have you ever seen the document since you have been back in
21 New York?

22 A. Yes.

23 Q. When was the first time you recall seeing this document in
24 New York?

25 A. When Ms. Perry showed it to me.

67brale2

Correa - cross

1 Q. When did she show it to you?

2 A. In her office. I don't recall the date.

3 Q. Approximately.

4 A. Two, three weeks ago.

5 Q. Two, three weeks ago is the first time you have seen this
6 document since Virginia?

7 A. Yes, sir.

8 Q. You testified earlier that you gave your paperwork to Agent
9 Rosenblatt though.

10 A. When I was writing the memo, I gave him back my notes and
11 the written memo.

12 Q. When you were writing the memo, you gave him back the
13 written notes and what else?

14 A. And the typed memo.

15 Q. Did you have this Miranda waiver form at that time when you
16 drafted your memorandum?

17 A. I don't think so.

18 Q. Do you know how this form came from Virginia to New York?

19 MS. PERRY: Objection.

20 THE COURT: I think he has answered that question a
21 number of times.

22 Q. When Ms. Perry showed you this form two or three weeks ago,
23 was that change there?

24 A. Yes, sir.

25 Q. But you don't recall that change being there at the time

67brale2

Correa - cross

1 you signed it?

2 MS. PERRY: Objection.

3 THE COURT: Overruled.

4 A. I don't recall changing the time on the document, no.

5 Q. You don't recall changing the time. Do you recall anyone
6 else changing the time?

7 A. No, sir.

8 Q. As far as your recollection is concerned, at the time it
9 was signed it was not changed?

10 A. No, sir. I'm saying I don't remember the change. It could
11 have happened, apparently it happened while we were there, but
12 I don't remember it.

13 Q. In your years of experience as a law enforcement officer,
14 are you allowed to question a person before Miranda?

15 A. In custody?

16 Q. Yes.

17 A. No, sir.

18 Q. You are allowed to ask them questions if they waive
19 Miranda, right?

20 A. Correct.

21 Q. So the time of that waiver is important, yes?

22 A. Correct.

23 Q. When you signed this document, if there had been a
24 deviation to the time, you would have noticed it?

25 A. Would I have noticed it at the time?

67brale2

Correa - cross

1 Q. Yes.

2 A. Yes, sir.

3 Q. Based on that, either the time had been changed and you
4 ignored it or the time had not been changed when you signed it,
5 is that fair to say?

6 A. No, sir.

7 Q. It is not fair to say?

8 A. No, sir.

9 Q. It is clear on its face that it has been changed, right?

10 A. Correct.

11 Q. Would you have signed a document that was altered this way?

12 A. Yes, sir.

13 Q. You would have signed a document altered this way?

14 A. Yes, sir.

15 Q. Why?

16 A. It's common to make mistakes and cross them out and initial
17 them on any document.

18 Q. On Miranda waivers?

19 A. Yes, sir.

20 Q. Is there a shortage of Miranda waivers at the federal
21 building in Virginia?

22 A. I have no idea, sir.

23 Q. If you made a mistake on the document before it was
24 executed, couldn't you just have gotten another document?

25 A. It is also common just to initial a mistake and move on.

67brale2

Correa - cross

1 Q. That is not what I am asking you. I am asking you, if you
2 had made a mistake on a document --

3 A. Yes, sir.

4 Q. -- could you have asked for a fresh document?

5 A. Yes, sir.

6 Q. But you never asked for a fresh document in this case?

7 A. Never.

8 Q. You continued to use this document whether or not it was
9 altered at the time you signed it?

10 A. Correct.

11 Q. And you have no personal recollection of it ever being
12 changed?

13 A. No, sir.

14 Q. In looking at that document, you earlier testified that it
15 appears that it was 0900 or 0930. Is that what you testified
16 to earlier?

17 A. Yes, correct.

18 Q. So it was either entered 9:30 or 9 o'clock?

19 MS. PERRY: Objection, your Honor. It is not his
20 handwriting and he has no recollection.

21 THE COURT: That has been asked and answered. Go
22 ahead, try again, Mr. Fineman. Try a different route on it.

23 Q. Were you wearing a watch on that day?

24 A. I usually wear a watch. Do I specifically remember wearing
25 a watch? I don't specifically remember, no.

67brale2

Correa - cross

1 Q. Do you recall, in the conference room did you have that
2 watch?

3 A. I don't remember.

4 Q. Did you have your cell phone in the conference room that
5 day?

6 A. Yes, sir.

7 Q. Did it have a clock on it?

8 A. Yes.

9 Q. You don't know who filled out this document other than your
10 signature?

11 A. I'm sorry?

12 Q. You don't know who filled this document out other than your
13 signature, is that what you are saying?

14 A. I remember Mr. Alexander signing it. I remember I signed
15 it. And I remember that the other agent signed it.

16 Q. Were you present when the time was entered on the document?

17 A. Yes, sir.

18 Q. Was anybody else present when the time was entered on the
19 document?

20 A. No. It was just the three of us.

21 Q. You, Mr. Alexander, and Peter Joseph?

22 A. Peter, yes.

23 Q. The person you know as Peter?

24 A. Yes.

25 Q. Yes?

67brale2

Correa - cross

1 A. Yes, sir.

2 Q. So either you entered the time on the document, Pete
3 entered the time on the document, Mr. Alexander entered the
4 time on the document, would that be accurate?

5 A. That would be accurate, yes, sir.

6 Q. Do you allow defendants to enter the time on documents?

7 A. It is not common practice, no, sir.

8 Q. In your experience, would you allow a defendant to write
9 the time of Miranda on a document?

10 A. That's not my practice, sir, no.

11 Q. Then it is fair to say either you or Mr. Joseph entered the
12 time on the document?

13 A. Yes, sir, although that's not my handwriting. I don't
14 believe I entered the time.

15 Q. Do you recall having a conversation with Mr. Joseph
16 discussing a change of time?

17 A. No, sir.

18 Q. If you had filled out a Miranda waiver for another officer
19 or, excuse me, another agent, and you had made a mistake, would
20 you have called that mistake to that other agent's attention?

21 A. Yes, sir.

22 Q. Do you recall any other agent calling to your attention the
23 change of time on the Miranda card?

24 MS. PERRY: Objection.

25 THE COURT: Overruled.

67brale2

Correa - cross

1 A. Do I recall? No, sir.

2 Q. Do you recall ever having a conversation with anybody about
3 the change of time on this Miranda document?

4 A. No, sir.

5 Q. When you gave your paperwork to Agent Rosenblatt, did he
6 ever call to your attention the change on the Miranda document?

7 A. No, sir.

8 Q. Up until just a couple of weeks ago, two or three weeks
9 ago, has AUSA Perry ever asked you any questions about the
10 Miranda document?

11 A. Yes.

12 Q. She has?

13 A. Yes.

14 Q. When?

15 MS. PERRY: I am going to object, your Honor. I don't
16 see how this is relevant?

17 THE COURT: Overruled. I will give him some leeway.
18 But do be conscious of the time, Mr. Fineman.

19 MR. FINEMAN: I apologize, your Honor. I do tend to
20 be long-winded sometimes.

21 THE COURT: It is not a question of that. I am just
22 giving you a heads-up, because your back is to the clock. Go
23 ahead.

24 Do you remember the question, Agent?

25 Q. You had discussed this document with Ms. Perry prior to two

67brale2

Correa - cross

1 or three weeks ago?

2 A. About two or three weeks ago.

3 Q. Before that?

4 A. Before that, no. No, I don't recall, no.

5 Q. I just specifically asked you, did you ever discuss this --

6 THE COURT: Hang on. In fairness to the agent, people
7 were talking. Ms. Perry objected. I was talking. His answer
8 was given. I think maybe we just didn't focus on it. Go
9 ahead.

10 MR. FINEMAN: Can we ask the court reporter to read
11 back the answer?

12 (Record)

13 Q. So you had had a conversation with her prior to a few weeks
14 ago?

15 A. No. I understand what you are asking differently, sir.
16 She had a conversation with me about this document two or three
17 weeks ago, is that what you are looking for?

18 Q. No. Did you ever talk to her before that?

19 A. Before two or three weeks ago, no, sir.

20 Q. Before two or three weeks ago, did you ever have a
21 conversation with Ms. Perry concerning the substance of my
22 client's statement?

23 A. No, sir.

24 Q. Or the circumstances of the arrest?

25 A. No.

67brale2

Correa - cross

1 Q. And no one until two or three weeks ago has brought this
2 issue of the Miranda document to your attention?

3 A. That's correct, sir.

4 Q. Is it true that at some point Mr. Alexander requested to
5 speak to an attorney?

6 A. He did.

7 Q. What time was that?

8 A. I don't know. It was after we had gone through the story
9 and I wrote my notes and I asked him to sign it.

10 Q. At the point that you asked him to sign your notes, he
11 asked for an attorney?

12 A. Yes.

13 Q. He had already signed the Miranda waiver earlier, without
14 asking for an attorney?

15 A. Yes, sir.

16 Q. The entire morning that you had been speaking to him and
17 constantly readvising him of his right to an attorney, he had
18 not been asking for one?

19 A. Not once.

20 Q. It was only at the point at which you asked him to sign the
21 statement that he wanted to speak to his lawyer?

22 A. Yes. He wanted specific advice as to whether he should
23 sign anything, a statement or anything.

24 Q. You testified earlier he had already signed something,
25 anything, a Miranda card.

67brale2

Correa - cross

1 A. Yes, sir.

2 Q. Now he wanted to ask his attorney if he should sign this
3 document?

4 A. Yes, sir.

5 Q. Is that what you are saying?

6 A. Yes, sir.

7 Q. As soon as he asked to speak to his lawyer, you gave him
8 that opportunity?

9 A. Yes, sir.

10 Q. How did he get in contact with his lawyer?

11 A. It was via telephone call. I'm not sure whose phone was
12 used, but it was via telephone call.

13 Q. Isn't it a fact that he had spoken using his own cell
14 phone?

15 A. He had been using his own cell phone all morning, yes,
16 after getting into the building, after getting into the
17 processing area.

18 Q. So he called his lawyer from his own cell phone, isn't that
19 true?

20 A. No, it's not true. I don't know what phone was used.

21 Q. You don't know?

22 A. No.

23 Q. You answered it twice. Do you know or is it not true?

24 A. We were in the conference room. He asked to speak to his
25 lawyer. You asked me is it true that he used his phone?

67brale2

Correa - cross

1 Q. Did he use his cell phone to call his lawyer?

2 A. I don't know.

3 THE COURT: Did you see him make the phone call?

4 THE WITNESS: Yes, sir. He was right in front of me.

5 THE COURT: There when he had a conversation with his
6 attorney?

7 THE WITNESS: Yes.

8 THE COURT: Do you remember what phone he used?

9 THE WITNESS: No.

10 THE COURT: Was there a telephone in the conference
11 room?

12 THE WITNESS: I don't remember.

13 Q. Isn't it true that that known call happened around 9
14 o'clock?

15 A. I don't know.

16 Q. How long had you been in the federal building at that
17 point?

18 A. I don't know. It would be a very, very rough estimate that
19 I would give you.

20 Q. At some point somebody filled out the Miranda card and
21 entered the time.

22 A. Yes.

23 Q. Is it customary to check your watch when you are entering
24 the time on a Miranda card to verify that the time is in fact
25 accurate?

67brale2

Correa - cross

1 A. Yes, sir.

2 Q. So it had to have been after 8:30?

3 A. Yes, sir.

4 Q. You said that you were talking to him for about half an
5 hour, is that true?

6 A. At most a half hour, right, yes, sir.

7 Q. So that would put him around 9 o'clock?

8 A. Yes, sir.

9 Q. As soon as he had gotten in contact with his lawyer, he
10 decided to cease cooperating with you and did not want to sign
11 any statements?

12 A. Correct.

13 Q. He had been cooperative all morning helping you find Mr.
14 Riddick, answering all of your questions, is that true?

15 A. Very cooperative.

16 Q. It is your testimony that you read him Miranda at his
17 home --

18 THE COURT: We are regurgitating.

19 MR. FINEMAN: All right, your Honor.

20 Q. The bottom line is a short time after he signed a written
21 Miranda waiver is when he called his lawyer, is that true?

22 MS. PERRY: Objection.

23 THE COURT: Sustained. He has given a time estimate.
24 To rephrase it as "a short time" is inappropriate.

25 Q. Isn't it a fact that only after signing the Miranda waiver

67brale2

Correa - cross

1 he asked to call his attorney?

2 A. That's correct.

3 MS. PERRY: Objection to form.

4 THE COURT: Overruled. The answer was?

5 A. That's correct.

6 MR. FINEMAN: No further questions.

7 MS. PERRY: Just one moment, your Honor. One very
8 brief line of redirect, your Honor.

9 **REDIRECT EXAMINATION**

10 BY MS. PERRY:

11 Q. Special Agent Correa, at some point after the arrest you
12 came into the U.S. Attorney's office for a proffer on Mr.
13 Alexander, correct?

14 A. Correct.

15 Q. Surrounding that proffer, did you have discussions with me?

16 A. Yes.

17 Q. Were those conversations generally -- did you describe the
18 substance of Mr. Alexander's statements at the time of his
19 arrest?

20 A. Yes.

21 MS. PERRY: No further questions.

22 THE COURT: Do you remember when that was, roughly,
23 what month?

24 THE WITNESS: I'm afraid I don't.

25 THE COURT: Do you remember how long after the arrest

67brale2 Correa - redirect

1 this was when you came to the proffer?

2 THE WITNESS: It was months. As a matter of fact, I
3 was out of the country for almost two months. Your Honor, it
4 was months. I'm not sure.

5 THE COURT: Did the subject of the time change in the
6 Miranda form come up during that meeting with Ms. Perry?

7 THE WITNESS: No, sir, I don't think so. We were
8 there for the proffer.

9 MS. PERRY: May I show one document to the witness,
10 your Honor, to attempt to refresh his recollection?

11 THE COURT: Sure. What are you showing, for the
12 record?

13 MS. PERRY: This is 3501-G.

14 THE COURT: OK.

15 Q. Do you recognize what has been marked for identification as
16 3501-G? Turn to the second page. Do you recognize your
17 signature on that page?

18 A. Yes, I do.

19 Q. Do you recognize what that is?

20 A. It was a document that was signed at the proffer agreement.

21 Q. Do you see the date on that proffer agreement?

22 A. March 29, 2006.

23 Q. Does that refresh your recollection that you may have had
24 discussions with the government about Mr. Alexander's
25 statements sometime around that time?

67brale2

Correa - redirect

1 A. Yes.

2 Q. When you testified earlier on cross that you hadn't had
3 discussions with the government about the substance of Mr.
4 Alexander's statements, were you referring specifically to
5 directly following Mr. Alexander's arrest, or what were you
6 referring to?

7 A. I wasn't referring to the proffer.

8 Q. So at some point you did have discussions with her?

9 A. I did.

10 Q. Did you convey the substance of Mr. Alexander's statements
11 to anybody following Mr. Alexander's arrest, any other agents?

12 A. No. Did I? I'm sorry.

13 Q. Let me repeat the question or rephrase it. After Mr.
14 Alexander made statements, did you have any discussions with
15 anybody to convey what Mr. Alexander had told you?

16 A. Discussing the statements he made at the proffer or --

17 Q. I'm sorry. No, no. After Mr. Alexander's post-arrest
18 statements, did you have a discussion with Special Agent
19 Rosenblatt about the substance of those statements?

20 A. Oh, yes.

21 MS. PERRY: No further questions.

22 MR. FINEMAN: I will be brief.

23 THE COURT: Go ahead.

24 **RECROSS-EXAMINATION**

25 BY MR. FINEMAN:

67brale2

Correa - recross

1 Q. You did have a conversation with somebody about his
2 statements at the time of arrest?

3 A. Yes, sir.

4 Q. Who did you have those conversations with?

5 A. The case agent.

6 Q. That is Mr. Rosenblatt?

7 A. Yes, sir.

8 Q. Did you ever have that conversation with the AUSA?

9 A. No, sir, only at this proffer and after.

10 Q. Earlier, on my original cross-examination, I had asked you
11 if you had had a conversation and you said no. Now, after Ms.
12 Perry had an opportunity to redirect you, that is not true, you
13 did actually have an opportunity to speak with Ms. Perry at
14 some point about the substance of my client's statement?

15 A. Yes, sir. I assumed -- what I remember from this proffer
16 is his statement from the proffer. I didn't equate this with
17 relaying what I found out at the statement, reporting it to
18 someone. But I did speak to her regarding it.

19 Q. You did speak to her regarding the subject of his post-
20 arrest statement?

21 A. Yes, sir.

22 Q. Then it was untrue when you said you had not?

23 A. Yes, sir.

24 MR. FINEMAN: Thank you.

25 MS. PERRY: No further questions, your Honor.

67brale2

1 THE COURT: Anything further, Mr. Fineman?

2 MR. FINEMAN: No, your Honor.

3 THE COURT: Agent Correa, you are excused. Thank you.

4 (Witness excused)

5 THE COURT: We are not going to do it now, but how
6 long is your direct of this next witness?

7 MS. PERRY: My direct, maybe ten minutes.

8 THE COURT: Why don't we come back at 2:15. Does this
9 person have a flight or a train to catch?

10 MS. PERRY: He does, but it is a government witness.

11 THE COURT: I have a 2:30. We will see if we can get
12 this done, at least this witness done, before I take that
13 matter. Mr. Fineman, do you anticipate calling anybody?

14 MR. FINEMAN: No, your Honor.

15 THE COURT: Then I think we should be able to get this
16 done. I will apologize profusely to the lawyers in the civil
17 case. We will see you at 2:15.

18 (Luncheon recess)

19

20

21

22

23

24

25

67BSALEX2

Joseph - cross

1 AFTERNOON SESSION

2 2:25 p.m.

3 THE COURT: Ms. Perry, your next witness.

4 MS. PERRY: The government calls Special Agent Peter
5 Joseph.

6 PETER JOSEPH,

7 called as a witness by the Government,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 DIRECT EXAMINATION

11 BY MS. PERRY:

12 Q. How are you employed?

13 A. I work for the United States Immigration and Customs
14 Enforcement.

15 Q. How long have you been with ICE?

16 A. 2-1/2 years now.

17 Q. Where are you located, which field office?

18 A. I work out of the resident-agent-in-charge office in
19 Norfolk, Virginia.

20 Q. That is a small satellite office?

21 A. It is.

22 Q. What are your primary responsibilities with ICE there?

23 A. The group I am in right now, we currently try to disrupt
24 and dismantle international drug smuggling organizations.

25 Q. Directing your attention to February 9, 2006, did there

67BSALEX2

Joseph - direct

1 come a time when you met an individual named Nathaniel
2 Alexander?

3 A. Yes, ma'am.

4 Q. Where was that?

5 A. That was at his residence in Portsmouth, Virginia.

6 Q. Why did you go to his residence?

7 A. I went to his residence to arrest him.

8 Q. And prior to that date, when was the first you heard of Mr.
9 Alexander?

10 A. The name -- I think I might have heard it a week before but
11 it didn't mean anything to me until the day before. My partner
12 Eric Jones handed me his name and said you are going to be
13 leader of this arrest team tomorrow.

14 Q. So prior to that you had no involvement whatsoever in this
15 case or in the investigation of this case?

16 A. No, ma'am.

17 Q. Have you had any subsequent involvement whatsoever in this
18 case following February 9, 2006?

19 A. No, ma'am.

20 Q. Were you accompanied by anyone else to Mr. Alexander's home
21 on February 9, 2006?

22 A. Yes.

23 Q. Who was that?

24 A. That is an FDA special agent, Tim Royster, Jason Wood, an
25 ICE agent, and two uniformed officers, as well as a SAC agent

67BSALEX2

Joseph - direct

1 from ICE. His name is Rubin. That is all I know him as.

2 Q. Had you spoken to Rubin prior to that day?

3 A. I met Rubin the night before at the airport.

4 Q. And how about subsequent to that February 9, had you spoken
5 with Rubin?

6 A. No, ma'am.

7 Q. Do you know his last name?

8 A. No.

9 Q. Approximately what time did you arrive at Mr. Alexander's
10 home?

11 A. I would say probably a little after 6.

12 Q. What was the first thing that happened when you arrived
13 there?

14 THE COURT: 6 in the morning I take it?

15 THE WITNESS: Yes, sir.

16 A. As head of the arrest team, which was my sole
17 responsibility was just initiate a safe arrest, I went up to
18 the door, knocked and Mr. Alexander came to the door after
19 several knocks. It was very early, which is the point of going
20 at 6 a.m. Mr. Alexander was clearly sleeping. He was dressed
21 in just his boxers, very surprised to see us, and he answered
22 the door.

23 I asked him who he was and he said his name was Nate,
24 Nat Alexander, something to that extent, and I informed him we
25 had an arrest warrant for him, stepped into the foyer of the

67BSALEX2

Joseph - direct

1 house and placed handcuffs on him.

2 Q. Where did you have your gun when you knocked on the door?

3 A. The gun was on my hip.

4 Q. Did you ever take it out of the holster at any time?

5 A. No, ma'am.

6 Q. By "any time" I mean any time that day in the presence of
7 Mr. Alexander.

8 A. No, ma'am.

9 Q. Do you know if any of the other agents unholstered their
10 guns?

11 A. No, ma'am. Not that I no of.

12 Q. You did not see any agents?

13 A. I didn't see any agents do that, no.

14 Q. Was there anyone else present in the home?

15 A. Yes, Mr. Alexander's wife and son, I believe.

16 Q. How did you find that out?

17 A. We walked in the door. Mr. Alexander asked why we were
18 there and at that point in time as far as my responsibilities
19 was I wanted to know if there are weapons in the house and how
20 many bodies were in the house.

21 Mr. Alexander was forthright from the second I started
22 talking to him and told me his wife and son were in the house
23 and of course there were no weapons. At that point in time we
24 allowed -- from what little I knew about the case is it was a
25 white collar case. Most warrants I do are drug related. Up to

67BSALEX2

Joseph - direct

1 knocking on the door there was no indication that there would
2 be a violent arrest and Mr. Alexander was very cooperative from
3 the very beginning so we tried to allow him to call his wife
4 out of the bedroom in case maybe she wasn't dressed and tried
5 to be respectful in that way.

6 Q. Was there anyone else home besides his wife?

7 A. His son.

8 Q. Where were his son and his wife?

9 A. They were each sleeping in their respective bedrooms at
10 which time we called them out and placed them in a family room.

11 Q. And where did you place Mr. Alexander?

12 A. At that point in time I think we placed him in the family
13 room while the rest of the agents swept the house for bodies.

14 Q. You mentioned Mr. Alexander was undressed at the time that
15 you arrived.

16 A. Right.

17 Q. Was he allowed to dress?

18 A. Yes, Agent Royster and I took him back to the bedroom. At
19 that time the questions we asked is where are your socks and he
20 indicated the drawers, and we asked if there were any weapons
21 in those drawers and he said no and we found no weapons. We
22 also took his cuffs off so he could put on his shirt.

23 Q. So he was cuffed upon arrest?

24 A. He was.

25 Q. Did he speak to you while you were with him in the room?

67BSALEX2

Joseph - direct

1 A. He did. He kept asking -- and he was very surprised --
2 what the arrest was about and kept asking me to pretty much
3 justify or to inform him what was going on.

4 Q. What did you say to him?

5 A. I told him that another agent would sit him down shortly
6 and discuss that with him.

7 Q. You stated that there was a security sweep?

8 A. There was.

9 Q. After the security sweep and after Mr. Alexander was
10 dressed, what did you do next?

11 A. After he was dressed we went out to a dining room area of
12 the house where Agent Rubin was and there was a uniformed
13 officer in the foyer. We placed Mr. Alexander down and I
14 walked over to the family room to see if everything was okay
15 with the wife and son. Again, my responsibility was the
16 arrest.

17 Q. So when you put him in the dining room he was there with
18 Rubin and you stated there was a uniformed officer?

19 A. Yes, ma'am. That is why I would never have left Agent
20 Rubin, officer safety issues, but a uniformed officer was
21 standing there so I felt fine to walk about the house.

22 Q. You said the uniformed officer was standing right there.
23 Where exactly was he?

24 A. From what I remember the foyer is adjacent to the dining
25 room and it's open. The officer stood by the door.

67BSALEX2

Joseph - direct

1 Q. Mr. Alexander and Rubin -- how were they situated in the
2 dining room?

3 A. From what I can remember it was like a long oval table. It
4 was a long table and they were seated on the same side of the
5 table facing each other with no table between them.

6 Q. You stated you left the dining room and you felt that the
7 situation was safe and you left the dining room?

8 A. Right. Like I said, Mr. Alexander gave us no indication
9 that he was hostile or uncooperative.

10 Q. How would you describe his demeanor?

11 A. He wouldn't stop talking from the time we walked in the
12 door to the time we took him to the marshals.

13 Q. Did he appear cooperative?

14 A. Very.

15 Q. At some point did you reenter the dining room?

16 A. I did.

17 Q. For what purpose?

18 A. I walked back in and asked Mr. Alexander if we could search
19 his house.

20 Q. What did he say?

21 A. He said yes, sure.

22 Q. He said what?

23 A. He said like sure, absolutely.

24 Q. Did he have any hesitation whatsoever?

25 A. No, ma'am.

67BSALEX2

Joseph - direct

1 Q. Did he tell you specifically where you could look for
2 documents?

3 A. He did. After Agent Royster and I started to look we
4 really didn't know what we were looking for due to us not
5 having any knowledge of the case and we asked Mr. Alexander if
6 he had an office or briefcase that we could look at.

7 Q. And did he tell you where specifically to look?

8 A. He directed us to where his briefcase was.

9 Q. Were you able to locate the briefcase easily enough?

10 A. Easily.

11 Q. What did you do with the briefcase?

12 A. We looked in it and we had no clue what we were looking for
13 so at that point in time we kind of terminated the search of
14 the house.

15 Q. Did Rubin also look in the briefcase, if you recall?

16 A. I can't remember.

17 Q. Do you know whether Mr. Alexander -- you said he was
18 talking constantly. Do you know whether he made statements to
19 Rubin in the home?

20 A. He was making statements to Rubin, yes, ma'am.

21 Q. Now, at some point you left Mr. Alexander's home and where
22 did you go?

23 A. We transported -- well, Agent Royster and Agent Rubin
24 transported Mr. Alexander back to the resident-agent-in-charge
25 office, the ICE office in Norfolk.

67BSALEX2

Joseph - direct

1 Q. What did you do?

2 A. I went back by myself at which point in time Agent Royster
3 called me and asked me if I could return to Mr. Alexander's
4 home and retrieve his telephone.

5 Q. Let me back up for one moment.

6 I know you stated that Mr. Alexander's cuffs were
7 removed when he dressed himself. Do you recall whether he was
8 in handcuffs for the duration of the period in which he was in
9 his home or not?

10 A. I can't remember. I believe him to be cuffed during the
11 duration in the home.

12 Q. Do you recall when he was transported if he was in cuffs or
13 not?

14 A. I don't know for sure but I would say almost definitively
15 he was cuffed during transport.

16 Q. Now, you said that you had a conversation with Agent
17 Royster while in transit back to the RAC office?

18 A. Yes, ma'am.

19 Q. What was the substance of that conversation?

20 A. Agent Royster asked me if I could return to Mr. Alexander's
21 home and retrieve his cell phone.

22 Q. And what was the purpose for retrieving the cell phone, if
23 you know?

24 A. At that point in time I knew that the other arrest team had
25 not identified Mr. Riddick, his location. I think I just

67BSALEX2

Joseph - direct

1 assumed it was for that purpose.

2 Q. When you returned to Mr. Alexander's home how did you
3 retrieve the cell phone?

4 A. I knocked on the door and his wife presented it to me.

5 Q. She gave it to you?

6 A. Yes, ma'am.

7 Q. What did you do with his cell phone?

8 A. I took it back to the RAC office in Norfolk.

9 Q. Can you say approximately what time you arrived at the RAC
10 office?

11 A. Say probably around 8, 8-ish, give or take.

12 Q. Give or take?

13 A. Yes, ma'am. It was rush hour traffic, tunnels, things like
14 that. I was almost at the office before I had to return to get
15 the phone.

16 Q. Would 8 o'clock be the latest it would have been if you can
17 say?

18 A. It probably could have been a little past 8.

19 Q. But anywhere within half an hour.

20 A. I would say 7:45 to 8 o'clock.

21 Q. Where was Mr. Alexander when you got to the RAC office?

22 A. I got to the office and Mr. Alexander was sitting in a
23 processing room in a containment cell and Agent Rubin was
24 speaking with him.

25 Q. Do you know if he had been processed already?

67BSALEX2

Joseph - direct

1 A. I am not sure if he had.

2 Q. Can you describe the processing room?

3 A. It's just a regular small room and it has a containment
4 cell and fingerprint equipment.

5 Q. Let me back up for a moment.

6 Were you present while Mr. Alexander was processed?

7 A. No, ma'am.

8 Q. You said it's a small room and can you describe it?

9 A. It's a small room with fingerprint equipment. Really Mr.
10 Alexander was in the cell and Agent Rubin pulled a chair in
11 from the hallway and sat across from him while the cell door
12 was open.

13 Q. So they were sitting --

14 A. Across from each other.

15 Q. Did Mr. Alexander appear comfortable at this time?

16 MR. FINEMAN: Objection.

17 THE COURT: Why don't you rephrase it.

18 Q. Was Mr. Alexander in handcuffs at this point?

19 A. I don't believe he was. Or, at some point in the near
20 future they came off because they were my cuffs. They were a
21 gift and in our line of business handcuffs walk away so I
22 wanted to get them back.

23 Q. So you did get them back at some point?

24 A. I did.

25 Q. Did you ask Mr. Alexander at any point if he wanted

67BSALEX2

Joseph - direct

1 anything, anything to drink? Did you try to make him
2 comfortable?

3 A. Yes, ma'am. I offered to get him some sort of beverage and
4 I went and got Agent Rubin a cup of coffee.

5 Q. When you arrived at the processing room was Mr. Alexander
6 speaking with Rubin at that time?

7 A. He was.

8 Q. Did he appear he was making statements?

9 A. Yes, ma'am.

10 Q. What did you do with the cell phone when you returned to
11 RAC?

12 A. I gave it to Agent Rubin.

13 Q. And during the time you were in the processing room was Mr.
14 Alexander placing any phone calls from that cell phone?

15 A. He did make some calls from that cell phone while in the
16 processing room, yes, ma'am.

17 Q. And while he was placing calls, did he also continue to
18 speak with Rubin?

19 A. Yes, ma'am.

20 Q. Can you describe Mr. Alexander's demeanor at the office?

21 A. Mr. Alexander appeared to be comfortable with us from
22 really the time we were at his house until the time we took him
23 to the marshals. And he was even joking with us toward the end
24 so he seemed to be very comfortable.

25 Q. By the way, were there any other ICE agents in the office

67BSALEX2

Joseph - direct

1 at that point when you arrived at the processing room?

2 A. When I arrived in the processing room there were probably
3 some agents around the office.

4 Q. Did you have any other business that day other than Mr.
5 Alexander's arrest?

6 A. Yes, ma'am. As I said earlier, we have a smaller office
7 and we were delivering I think around 2000 pounds of marijuana
8 for the Arizona office on a controlled delivery and that kind
9 of weighed. Logistics are pretty severe. I was running around
10 all over the place making phone calls and making arrangements.

11 At some point was Mr. Alexander presented with a written
12 Miranda waiver form?

13 A. Yes, ma'am, he was.

14 Q. And who retrieved that form?

15 A. I went and got the form.

16 Q. Where did you get it from?

17 A. From my search kit in my vehicle.

18 Q. Is there any reason you went down to the vehicle to get it?

19 A. There was. We had a new form that had just come out and I
20 knew for a fact that I made copies of it and it was in my
21 search kit. I wasn't sure where they were stored in the office
22 so I went down to get it.

23 Q. What happened when you returned with that written waiver
24 form?

25 A. We either transported Mr. Alexander to the conference room

67BSALEX2

Joseph - direct

1 or he was already placed in the conference room.

2 Q. So when you returned with the form you went to the
3 conference room with Mr. Alexander?

4 A. Yes, ma'am.

5 Q. Was anyone else there as well?

6 A. Agent Rubin.

7 Q. And he was not in handcuffs at this point, Mr. Alexander?

8 A. No, I don't think he was.

9 Q. What was Mr. Alexander told when the form was presented to
10 him?

11 A. Agent Rubin showed him the form and said this is just some
12 like formality type thing, something we have to go over.

13 Again, just paper-wise, and they both -- I can't remember if
14 Agent Rubin read it but it was presented and looked over. Mr.
15 Alexander signed it at which time I grabbed it, signed it, and
16 filled in the information regarding date and time.

17 Q. Did Mr. Alexander go through the form and did he indicate
18 that he understood it?

19 A. It was my feeling that he did understand his rights.

20 Q. Did you have any doubts about his understanding of those
21 rights whatsoever?

22 A. Not at all.

23 THE COURT: How long did he look at it?

24 THE WITNESS: I can't remember, sir.

25 THE COURT: Do you know that he read it?

67BSALEX2

Joseph - direct

1 THE WITNESS: I don't know that he read it. I know it
2 was presented to him and he looked it over and Agent Rubin
3 asked him if he understood his rights.

4 THE COURT: What did he say?

5 THE WITNESS: He indicated yes, he had.

6 Q. You don't recall specifically whether he read it outloud?

7 A. I can't remember.

8 Q. But you do recall you didn't have any question about his
9 understanding?

10 A. No, ma'am.

11 Q. You stated that you filled out the dates and the time?

12 A. I did.

13 Q. How do you recall that you were the individual that filled
14 out the date and time?

15 A. Because I messed up and I know that I messed up because I
16 filled out the date and time an hour off. I handed it to Rubin
17 to sign and I signed as a witness on the bottom line. Usually
18 the initiating officer signs the top line. I gave it to Agent
19 Rubin and he immediately looked at it and he goes, "No, you
20 mean 8:30," and I went "of course", and I felt like an idiot
21 and I got a senior agent there and it was a bonehead move and I
22 looked at my watch wrong.

23 Q. So you have an independent memory of making that error?

24 A. Absolutely because I felt like a moron.

25 Q. I would like to show you now what has been admitted into

67BSALEX2

Joseph - direct

1 evidence as Government Exhibit 1 and ask you if you recognize
2 this document.

3 A. Yes, ma'am, I recognize the document.

4 Q. What is that?

5 A. It's statement of rights Mr. Alexander signed.

6 Q. Did you sign that as well?

7 A. I did.

8 Q. Where is your signature?

9 A. On the bottom line under witness.

10 Q. Did anyone else sign that form?

11 A. Mr. Alexander and Rubin.

12 Q. Turning to the handwritten portion under the word waiver,
13 there is some typewritten portion on this and there is a
14 handwritten portion.

15 Whose handwriting is that?

16 A. That is my handwriting.

17 Q. Can you -- and you can take the form out if it helps to
18 look at the ink more directly and I know it's through plastic
19 so you can take it out. Can you read the time as it was
20 originally written?

21 A. It was originally written as 9:30.

22 Q. And what happened after you wrote 9:30?

23 A. After I wrote 9:30 I signed it, handed it back to Rubin and
24 he immediately told me that I made mistake. I grabbed the
25 form, started scribbling -- I don't know. I was flustered. I

67BSALEX2

Joseph - direct

1 was a little embarrassed and after trying to make an effort I
2 just started scratching it out and I put a clear line through
3 it and put my initials and made a clear line underneath.

4 Q. Directly to the right of where it says that crossed-out
5 time there is a marking. Those are your initials?

6 A. Those are my initials.

7 Q. Do you see underneath it says 0830?

8 A. Yes, ma'am.

9 Q. Is that your handwriting?

10 A. It is.

11 Q. Next to that there is a marking. Do you recognize what
12 that is?

13 A. No, ma'am.

14 Q. Those are not your initials?

15 A. No, ma'am.

16 Q. Did Rubin tell you almost immediately that you had made
17 that error?

18 A. Immediately.

19 Q. And did you make that correction as soon as he informed
20 you?

21 A. Yes, ma'am.

22 Q. And did you initial that as soon as he informed you?

23 A. I did.

24 Q. Did you make any change to this document outside of Mr.
25 Alexander's presence?

67BSALEX2

Joseph - direct

1 A. No, ma'am.

2 Q. That change was done in Mr. Alexander's presence?

3 A. Yes, ma'am.

4 Q. Do you know whose initials those are next to 0830?

5 A. No, ma'am.

6 Q. They are either Mr. Alexander's or Special Agent Correa?

7 A. Yes, they were the only people in the room.

8 THE COURT: Also known as Special Agent Rubin for
9 these purposes.10 Q. Just take your time. I know you are nervous about
11 testifying. Just wait until I finish the question.

12 A. Okay.

13 Q. Can you please describe the watch that you were wearing at
14 the time you filled out this form?15 A. It's a Kenneth Cole, white-faced, and I have it right here.
16 It's the same watch I have had for a couple of years now.

17 Q. Are you wearing it right now?

18 A. Yes, ma'am.

19 Q. Can you please describe the face? Is it digital or
20 analogue?

21 A. Analogue.

22 MS. PERRY: I would like to make that available to the
23 court and Mr. Fineman if desired.

24 THE COURT: Free advertising for Kenneth Cole.

25 Q. Can you take it off?

67BSALEX2

Joseph - direct

1 A. Absolutely.

2 THE COURT: All right, Mr. Fineman, at your leisure,
3 do you want to come up now and take a look at it?

4 MR. FINEMAN: Can I take a look?

5 THE COURT: Sure. It has been offered. A free look
6 at a Kenneth Cole watch.

7 Q. That is the watch you were wearing at the time of the
8 signing of that Miranda waiver form?

9 A. Yes, ma'am.

10 Q. At any other time in your career have you made any other
11 amendments to any Miranda waiver forms?

12 A. Yes, ma'am, I have.

13 Q. Can you please describe the circumstances of that change?

14 A. It was prior to this year we had a gentleman who requested
15 counsel and then asked to speak with law enforcement at which
16 time we re-initialed a second waiver-of-rights form and
17 indicated at the bottom something along the lines of "I
18 previously requested counsel but now wish to speak to law
19 enforcement," and I note he initialed it. I am sure my name is
20 on the sheet.

21 Q. So you believe he initialed that change?

22 A. I know he initialed the change. I believe mine was on
23 there also.

24 Q. After signing this form, did Mr. Alexander continue to make
25 statements?

67BSALEX2

Joseph - direct

1 A. He did.

2 Q. Do you know whether he went through the entirety of his
3 statement?

4 A. Agent Rubin told him since we had this form signed along
5 with whatever we discussed earlier that we were going to go
6 over all his prior statements.

7 Q. By the way, can you please describe briefly the conference
8 room, the layout of the conference room?

9 A. It's a square room. We have a long oval table. Mr.
10 Alexander and I were sitting across from each other at one end
11 of the table and Rubin was at the head.

12 Q. Were you in pretty close proximity?

13 A. We were all very close.

14 Q. During the time that you were in the conference room did
15 Mr. Alexander also continue to place any phone calls?

16 A. He did.

17 Q. And, again, what was the purpose of these calls?

18 A. I believe he was trying to locate Mr. Riddick.

19 Q. Were you present for the entirety of the remainder of the
20 interview with Mr. Alexander?

21 A. No, ma'am.

22 Q. Special Agent Joseph, at what time did Mr. Alexander sign
23 the Miranda waiver form that has been marked as Government
24 Exhibit 1?

25 A. He signed the form at 8:30 a.m.

67BSALEX2

Joseph - direct

1 MS. PERRY: No further questions, your Honor.

2 THE COURT: Mr. Fineman, cross examination.

3 MR. FINEMAN: Can I ask for a very, very brief recess?

4 THE COURT: How brief are we talking about?

5 MR. FINEMAN: Less than a minute.

6 THE COURT: That is brief, sure.

7 (Recess)

8 MR. FINEMAN: May I proceed, your Honor?

9 THE COURT: You certainly may.

10 MR. FINEMAN: I apologize for the brief delay.

11 THE COURT: Not a problem.

12 CROSS EXAMINATION

13 BY MR. FINEMAN:

14 Q. Agent Joseph, I am going to ask you a few questions. I
15 represent Mr. Alexander. If there is anything that you don't
16 understand or if you would like me to repeat a question let me
17 know and I will try to do my best?

18 A. Yes, sir.

19 Q. You testified earlier that you first heard of Mr.
20 Alexander's name about a week prior to the arrest, is that
21 true?

22 A. Just as much -- yes, sir, it was.

23 Q. And in what context was that?

24 A. We were just trying to identify where he lived.

25 Q. At whose direction?

67BSALEX2

Joseph - cross

1 A. I think Agent Rosenblatt sent down a collateral request to
2 my office and my partner, Agent Jones, received it and we did
3 some drive-bys of some addresses.

4 Q. Have you ever met with Agent Rosenblatt before today.

5 A. We talked on the phone a lot.

6 Q. You have?

7 A. Yes, sir.

8 Q. February 9 you went to my client's home to effect the
9 arrest, is that true?

10 A. Yes, sir.

11 Q. And when you arrived there you knocked on the door or rang
12 the bell and eventually my client came to the door?

13 A. That is correct.

14 Q. And it's true that he was wearing nothing but underwear?

15 A. Correct.

16 Q. So it would be fair to say his chest was exposed?

17 A. Yes, sir.

18 Q. And it would be accurate his legs were exposed?

19 A. Yes, sir.

20 Q. He wasn't wearing pajamas?

21 A. Not what from what I can recall, sir.

22 Q. And you entered his home?

23 A. Yes, sir.

24 Q. Who were you with?

25 A. FDA Special Agent Tim Royster, ICE Agent Jason Wood, two

67BSALEX2

Joseph - cross

1 uniformed officers, and Agent Rubin.

2 Q. So that would be five law enforcement officials?

3 A. Yes, sir.

4 Q. And everybody entered the home?

5 A. I believe maybe one of the uniformed officers stayed
6 outside.

7 Q. So at least four people entered the home?

8 A. Yes, sir.

9 Q. And then you conducted a security sweep?

10 A. Yes, sir.

11 Q. Was that at your direction or at Agent Rubin's direction?

12 A. It was probably -- I was in charge of the arrest so it was
13 at my direction.

14 Q. You were in charge of the arrest?

15 A. Yes, sir.

16 Q. Even though this case originated in the New York?

17 A. My responsibility was the arrest itself, a safe arrest.

18 Q. Did you have a search warrant?

19 A. No, sir.

20 Q. How was a security sweep conducted?

21 A. Mr. Alexander was in his home. It was winter. He wasn't
22 wearing any clothes. He identified himself. I had the arrest
23 warrant, went in and put cuffs on him in the immediate area. I
24 needed the area to be searched as far as bodies were concerned.

25 Q. When Mr. Alexander opened the door he was in the foyer?

67BSALEX2

Joseph - cross

1 A. Yes, sir.

2 Q. Was there anybody else in the foyer?

3 A. No, sir.

4 Q. Did you need to search anywhere beyond the foyer at that
5 point?

6 A. At that point, no, sir.

7 Q. Why did you need to enter the home?

8 A. To apprehend Mr. Alexander.

9 Q. But he was at the door.

10 A. Right.

11 Q. How far away was he from you when you were standing at the
12 door?

13 A. I don't know, 2, 3 feet.

14 Q. Could you reach out and touch him?

15 A. Can I reach out and touch him?

16 Q. Yes.

17 A. Once I opened the door and could reach inside the house.

18 Q. And you did in fact touch him by placing handcuffs on him
19 right away.

20 A. Yes, sir.

21 Q. At that point the arrest was complete, is that true?

22 A. It was. We had Mr. Alexander but, like I said, it was his
23 home. From an officer safety standpoint we needed that house
24 to be cleared.

25 Q. You needed that house to be cleared because you needed to

67BSALEX2

Joseph - cross

1 go inside?

2 A. I needed the house to be cleared because it was dark.

3 There is a lot of rooms in the house. I didn't know. When we
4 were at the door we announced our presence. In our line of
5 work, you know, bad things can happen in those circumstances.6 Q. But if you didn't need to go inside why would you have to
7 clear the home?

8 MS. PERRY: Objection.

9 THE COURT: Overruled.

10 A. Please repeat the question.

11 Q. If you didn't have to go inside why would you have to sweep
12 the home?

13 A. I had to go inside to grab Mr. Alexander, put cuffs on him.

14 Q. You testified he was only 3 feet away from you.

15 A. The way I was thinking, sir, it was winter. We try to
16 treat people we apprehend with a certain amount of respect. It
17 was cold. He wasn't wearing any clothes.18 Q. He wasn't wearing any clothes. You went in and handcuffed
19 him. And at that point you conducted the search?

20 A. The sweep, yes, sir.

21 Q. The sweep, I apologize.

22 A. Yes, sir.

23 Q. And when you conducted the sweep are you the agent who
24 conducted it or somebody else?

25 A. No, sir, I stayed with Mr. Alexander.

67BSALEX2

Joseph - cross

1 Q. So who conducted the sweep?

2 A. The other agents.

3 Q. The FDA special agent?

4 A. Yes, sir.

5 Q. And another agent from your office?

6 A. Yes, sir.

7 Q. What about Agent Rubin?

8 A. I can't remember. I think he probably participated. I am
9 not sure. I stayed with Mr. Alexander.

10 Q. You think he probably participated in the security sweep?

11 A. I am not sure.

12 Q. You are not sure.

13 A. No.

14 Q. And who else was in Mr. Alexander's home?

15 A. It was --

16 Q. I am talking about his family.

17 A. His wife and I believe his son.

18 Q. Do you know where they were?

19 A. They were in their bedrooms.

20 Q. Do you know where their bedrooms were?

21 A. Down the hallway.

22 Q. Down the hallway in what direction?

23 A. I am sorry, I don't understand your question.

24 Q. When you walk into the house are the bedrooms right there
25 or do you have to walk some distance?

67BSALEX2

Joseph - cross

1 A. There is the foyer and then there is hallway that goes left
2 and I remember Mr. Alexander's room is to the right. I don't
3 know where the other body was.

4 Q. Is there a home office in this house?

5 A. There was.

6 Q. There was. Where was it?

7 A. Or at least a place where there was I believe a desk. It
8 was off to the dining room.

9 Q. Off to the dining room?

10 A. Yes, sir.

11 Q. Not in the basement?

12 A. I didn't know there was a basement.

13 Q. You didn't know there was a basement?

14 A. No, sir.

15 Q. So there was no security sweep there?

16 A. There was a sweep of the immediate area.

17 Q. If somebody was hiding in the basement you wouldn't find
18 them?

19 A. They would have got us.

20 Q. Excellent.

21 MS. PERRY: Objection, your Honor.

22 THE COURT: What is the point of that, Mr. Fineman?

23 MR. FINEMAN: I apologize. It has been a rough
24 morning.

25 Q. At some point my client was taken out of the home, is that

67BSALEX2

Joseph - cross

1 correct?

2 A. Yes, sir.

3 Q. And where was he taken?

4 A. He was taken to our ICE office in Norfolk.

5 Q. How far away from that is his home?

6 A. Mile-wise or minute-wise?

7 Q. Minute-wise.

8 A. Minute-wise, no traffic probably 15, 20 minutes. With
9 traffic probably 30-ish.

10 Q. How long were you in the home?

11 A. I can't really remember. Probably somewhere between a half
12 hour to an hour, 45 minutes.

13 Q. Half hour to an hour?

14 A. Yes, sir.

15 Q. And what was going on during that half hour to an hour
16 other than a security sweep?

17 A. Agent Rubin was speaking with Mr. Alexander.

18 Q. And that was in the dining room?

19 A. Yes, sir.

20 Q. Were you present for the entire time they were having a
21 conversation?

22 A. No, sir.

23 Q. And at that point was Mr. Alexander still in his underwear
24 or was he dressed?

25 A. No, we allowed him to be clothed.

67BSALEX2

Joseph - cross

1 Q. Was he clothed in your presence?

2 A. Yes, sir.

3 Q. Who else was there when he was getting dressed?

4 A. Agent Royster.

5 Q. And where was Agent Rubin?

6 A. Agent Rubin -- I don't know. I was with Mr. Alexander.

7 Q. Did you take Mr. Alexander's family anywhere?

8 A. Yes, sir.

9 Q. Where did you take them?

10 A. To like a den, a family area of the house.

11 Q. Was anybody standing with them?

12 A. Yes, sir.

13 Q. Were they permitted to walk around the home?

14 A. I don't know.

15 Q. Would you have permitted them to walk around the home?

16 A. Would I have --

17 MS. PERRY: Objection.

18 THE COURT: Sustained.

19 Q. Were you the agent in charge of the arrest?

20 A. Yes, sir.

21 Q. And were you the agent who had the authority to tell other
22 agents what to do?

23 A. Yes, sir.

24 Q. And under your authority did you allow Mr. Alexander's
25 family to walk around the home?

67BSALEX2

Joseph - cross

1 A. It was never asked. They were seated in the family room.
2 They appeared to be comfortable.

3 Q. But they were separated from Mr. Alexander?

4 A. They were.

5 Q. Is there a reason why they were separated from Mr.
6 Alexander?

7 A. There was a reason they were sat down and congregated in
8 one room.

9 Q. What was that reason?

10 A. It was their home. If there were any weapons or anything
11 as far as that in the house they would know where they were.

12 Q. So, in other words, you wouldn't have let them walk around
13 unattended?

14 A. Personally, no, sir.

15 Q. Is there a reason why they were being held in a different
16 room from Mr. Alexander?

17 A. Typically when we speak to a suspect they are isolated.

18 Q. Before going to my client's home that morning, did you meet
19 with Agent Rubin?

20 A. We all congregated at the same parking lot.

21 Q. Where is that?

22 A. I don't know the road. It was like an Office Depot parking
23 lot.

24 Q. How far away is that from my client's home?

25 A. I would say less than -- I really can't remember. Not very

67BSALEX2

Joseph - cross

1 far.

2 Q. And at that meeting was it discussed about the procedure
3 that would be taken to effect the arrest?

4 A. I am sorry?

5 Q. Did any procedural conversation come up about how you would
6 effect the arrest?

7 A. Not --

8 Q. Let me rephrase the question.

9 Was there a conversation had where you discussed your
10 plan on effecting the arrest?

11 A. I mean, not really from what I can remember.

12 Q. Was there a plan?

13 A. It was known I was going to be the one knocking on the
14 door.

15 Q. Beyond that?

16 A. Beyond that, no, sir, not that I can remember.

17 Q. Did anybody discuss taking Mr. Alexander's statement at
18 that morning meeting in the garage?

19 A. Not that I remember.

20 Q. You can't remember?

21 A. No, sir.

22 Q. Did anybody discuss searching for evidence at that
23 pre-arrest meeting?

24 A. Not that I can remember, sir.

25 Q. Is it possible it was discussed?

67BSALEX2

Joseph - cross

1 MS. PERRY: Objection.

2 THE COURT: Overruled.

3 A. It was 5:30 in the morning, 6 months ago, on a case that I
4 was not the case agent on nor had any involvement in so
5 anything is possible.

6 Q. So as you just said, this is a case that you were not
7 involved in, you were not the case agent for, yet you
8 specifically recall the time that you had my client sign a
9 Miranda waiver.

10 A. Right.

11 Q. And you recall that because you made a mistake on that
12 document?

13 A. Yes, sir.

14 Q. Did you make that mistake before or after he signed it?

15 A. I am saying it was made after he signed it.

16 Q. So the document in terms of where the lines are for the
17 handwritten portion where you would put in the time and the
18 date, those lines were empty?

19 A. Yes, sir.

20 Q. And you signed a document without any information being put
21 in there?

22 A. Mr. Alexander signed it, and then I signed it, and then I
23 filled in the information.

24 Q. Did Agent Rubin sign it before or after you filled in the
25 information?

67BSALEX2

Joseph - cross

1 A. I made the mistake. I handed it to Agent Rubin to sign and
2 Agent Rubin handed it back to me and I corrected the mistake
3 and Agent Rubin signed it.

4 Q. So you made the mistake and Agent Rubin saw the mistake,
5 corrected you, and you corrected the mistake, and then you
6 signed it. That is the correct sequence of events?

7 A. Yes, sir.

8 Q. What did Agent Rubin say to you when he noticed the
9 mistake?

10 A. He said, "You mean 8:30." And I said, "Of course."

11 Q. How did you make that that mistake?

12 A. I just made a mistake. My watch doesn't have numbers on
13 it. Like I said, we were up late the night before getting
14 ready to take a controlled delivery, up early, and I made a
15 mistake. I read the watch incorrectly.

16 Q. You just read the watch incorrectly?

17 A. Yes, sir.

18 Q. And you wrote 9:30 when you should have written 8:30?

19 A. Yes, sir.

20 Q. Please take a look at that document if you still have it.
21 The third number in at the point where you write -- it says, "I
22 have signed this document at."

23 A. Right.

24 Q. The numbers as I see them are 0, is that correct?

25 A. Yes, sir.

67BSALEX2

Joseph - cross

1 Q. And then there is a 9.

2 A. Right.

3 Q. And then the third document, is that where the 3 was where
4 it said 9:30?

5 MS. PERRY: Objection to the form. Third document?

6 MR. FINEMAN: We are talking about the waiver.

7 MS. PERRY: You said third document.

8 Q. The third number.

9 A. Yes, sir.

10 Q. The third number is where you had a 3?

11 A. It originally was a 3.

12 Q. And you had to change that from 9:30 to 8:30, is that true?

13 A. That is right.

14 Q. So the first number you tried to change is the number that
15 is the 3 indicating 30, not the 9 which was the mistaken
16 number?

17 A. Right.

18 Q. So you decided that rather than making the 9 into an 8, you
19 would make the 3 into a zero?

20 A. I just made a mistake. I was a little embarrassed to make
21 a mistake and I started scratching down and realized a simple X
22 would do with my initials and the correct time.

23 Q. First you made a mistake by writing 9:30 and then you made
24 a mistake by correcting the part that was right, the fact it
25 was the bottom half of the hour. So you made two mistakes in

67BSALEX2

Joseph - cross

1 filling out this document.

2 A. Yes, sir.

3 Q. And then you gave up on trying to alter the number and you
4 wrote 8:30 underneath.

5 A. Yes.

6 Q. And that was after Mr. Alexander signed it?

7 A. That was after Mr. Alexander signed it, yes, sir.

8 Q. And you initialed the change?

9 A. I initialed the change.

10 Q. Once or twice?

11 A. My initials are on the sheet one time.

12 Q. So do you know what that squiggly line next to 8:30 is?

13 A. The first time I saw that was yesterday.

14 Q. That is the first time you ever saw it?

15 A. Yes, sir.

16 Q. It wasn't there when you originally changed the document?

17 A. I don't know what that is. Not that I can remember, sir.

18 Q. You didn't put it there?

19 A. The one next to 8:30?

20 Q. Yes.

21 A. That is not my initials.

22 Q. As far you know it wasn't done in your presence?

23 A. Not that I can remember, sir.

24 Q. Did you ask Mr. Alexander to initial the change?

25 A. Not that I can remember.

67BSALEX2

Joseph - cross

1 Q. Did you ask Agent Rubin to initial the change?

2 A. I don't remember, sir.

3 Q. Now, at the point at which Agent Rubin pointed out to you
4 your error, were there any other blank Miranda sheets
5 available?

6 A. There was. It was down in my car.

7 Q. So you brought one sheet up with you from the car?

8 A. Yes, sir.

9 Q. Do they have these sheets in your facility, in your office?

10 A. Right. Like I stated previously, a new form had come out
11 with our top letterhead and it had just come out and I think
12 there were revisions in the statement. It came down from
13 headquarters. I didn't know if they had been replaced yet in
14 the file but I knew for a fact I had them in my search kit in
15 the car.

16 Q. Is there a file where these documents would be held if they
17 had replaced it?

18 A. Sometimes.

19 Q. What do you mean?

20 A. I mean sometimes we are not the most organized office.

21 Q. So there is a specific place that these documents would be
22 held and what you are saying is sometimes they are there and
23 sometimes they are not or there is no specific place where you
24 keep them?

25 A. I never pulled a document from the file. I know there is a

67BSALEX2

Joseph - cross

1 file where we keep ICE forms.

2 Q. And in that file where they keep ICE forms do they keep
3 these Miranda waiver documents?

4 A. I would think so. I don't know that for a fact.

5 Q. How long have you been an agent?

6 A. A couple of years.

7 Q. 2 years?

8 A. Yes, sir.

9 Q. Have you arrested people before?

10 A. I have.

11 Q. Have you questioned people before?

12 A. Yes, sir.

13 Q. Have you administered Miranda warnings to people before?

14 A. Yes, sir.

15 Q. Have you done written Miranda warnings before like this?

16 A. Yes, sir.

17 Q. And where do you normally get the document that you have
18 the person sign?

19 A. From my search kit that I keep in my car.

20 Q. Do you have an office at your building?

21 A. I do.

22 Q. Do you have a desk?

23 A. Yes, sir.

24 Q. File cabinet?

25 A. Yes, sir.

67BSALEX2

Joseph - cross

1 Q. And you don't keep any of these documents in your office?

2 A. No, sir.

3 Q. Do you ever interview people in your office?

4 A. Rarely. Mostly it's just according by plea agreements and
5 things of that nature.

6 Q. Do you ever interview people away from your office?

7 A. Yes, sir.

8 Q. That is why you keep the Miranda document in your car?

9 A. Yes, sir.

10 Q. Did you drive your car to the time of arrest?

11 A. I did.

12 Q. So the Miranda waiver document was available at his home if
13 you just went to the car, is that true?

14 A. Yes, sir.

15 Q. Did Agent Rubin ever ask you to get a Miranda warning
16 document?

17 A. No, sir.

18 Q. At the point in time in which you were at the ICE
19 headquarters or facility for lack of a better word, did there
20 come a time there that Agent Rubin asked you specifically for a
21 Miranda waiver card?

22 A. No, sir.

23 Q. No?

24 A. No.

25 Q. So why did you give it to him?

67BSALEX2

Joseph - cross

1 A. I asked Mr. Rubin what time Mr. Alexander signed the
2 waiver-of-rights form.

3 Q. What did he say?

4 A. He said Mr. Alexander did not sign a change
5 waiver-of-rights form.

6 Q. What did you say?

7 A. Have him sign one.

8 Q. Was it was your idea to have Mr. Alexander sign the waiver
9 form?

10 A. In my our office -- different jurisdictions are different.
11 As far as our practice, in our office our AUSAs typically like
12 us to have these filled out if we are going to speak as a good
13 practice. That is what I was used to and that is what I am
14 used to doing over the last couple of years so I suggested it.

15 Q. What time did you suggest that?

16 A. I can't remember. Shortly after I got back to the office.

17 Q. So Agent Rubin never asked for one?

18 A. No, sir.

19 Q. Okay.

20 Q. And it's your testimony that the waiver was signed at
21 approximately 8:30 in the morning?

22 A. Yes, sir.

23 Q. Did you stay in the room the entire time that Mr. Alexander
24 was being questioned?

25 A. No, sir.

67BSALEX2

Joseph - cross

1 Q. Did there come a time that you came back to the room?

2 A. I came back to the room and I believe there was a certain
3 time when Agent Rubin had to speak with the case agent, and of
4 course he had to do that privately, and for officer safety we
5 keep at least one person with the body in the office. So I sat
6 in there with Mr. Alexander.

7 Q. What time was that?

8 A. I can't remember.

9 Q. You don't recall?

10 A. No, sir.

11 Q. Did you ever take any notes in this case?

12 A. No, sir.

13 Q. Do you have any memoranda that you prepared?

14 A. No, sir.

15 Q. And you are not the case agent on this case?

16 A. No, sir.

17 Q. But you specifically remember it was 8:30 that you had him
18 sign the Miranda waiver?

19 A. Simply because I made an error and I was embarrassed about
20 it. At least as far as significant events go that morning that
21 was one of them.

22 Q. Since that day have you ever had a conversation with Agent
23 Rubin?

24 A. No, sir.

25 Q. And did there come a time that you ever spoke to the

67BSALEX2

Joseph - cross

1 Assistant United States Attorney in this case?

2 A. Yes, sir.

3 Q. When was the first time?

4 A. I probably first spoke with her roughly about a month ago.

5 Q. Did she ask you about the change of time on the Miranda
6 card?

7 A. She did.

8 Q. And you explained to her you made a mistake?

9 A. I did.

10 Q. Prior to about a month ago you had never heard from anybody
11 in New York asking you about this document?

12 A. No, sir.

13 Q. Just after the lunch break, isn't it a fact that you were
14 having a conversation with Agent Rosenblatt?

15 A. Yes, sir.

16 Q. What was the subject of that conversation?

17 A. During lunch?

18 Q. Yes.

19 A. I had to cancel my flight to get home and I was claiming I
20 had a lot of work to do and he was giving me a hard time saying
21 I was underestimating my role in the current case we are
22 working.

23 Q. Did you have any conversation about the substance of the
24 testimony or the agent who preceded you?

25 A. No, sir.

67BSALEX2

Joseph - cross

1 Q. It's your testimony that Agent Rubin was aware of the
2 change of time?

3 A. Yes, sir.

4 MR. FINEMAN: Thank you.

5 No further questions.

6 THE COURT: Redirect.

7 MS. PERRY: One moment, your Honor.

8 (Pause)

9 MS. PERRY: No redirect, your Honor.

10 THE COURT: Agent, you are done.

11 You can go back to Virginia and do your work.

12 (Witness excused)

13 THE COURT: Anybody else you are going to call, Ms.
14 Perry?

15 MS. PERRY: No, your Honor.

16 THE COURT: Mr. Fineman, you say you are not calling
17 anybody?

18 MR. FINEMAN: No, I am not, your Honor.

19 THE COURT: Mr. Fineman, what do you want to do?

20 Do you want to submit something and tell me why you
21 think you should win this motion? Do you want to argue it now?

22 MR. FINEMAN: I can have an opportunity to submit
23 papers?

24 THE COURT: Yes.

25 MR. FINEMAN: I would like the opportunity.

67BSALEX2

1 THE COURT: When can you have your papers in?

2 MR. FINEMAN: In two weeks, your Honor.

3 THE COURT: All right, I will get your papers July 25
4 and, Ms. Perry, your response, how much time do you think you
5 need?

6 MS. PERRY: One week, your Honor.

7 THE COURT: You think you only need a week?

8 MS. PERRY: Yes.

9 THE COURT: So that takes you to August 1st.

10 MS. PERRY: There is one small caveat. I may be
11 beginning a three-day trial beginning on July 24 before Judge
12 Berman. In the event that that happens --

13 THE COURT: Write me a letter.

14 MS. PERRY: Thank you.

15 THE COURT: I assume within reason Mr. Fineman won't
16 have a problem with it.

17 MR. FINEMAN: Ms. Perry starts a trial she needs
18 additional time I am already consenting to it.

19 THE COURT: Mr. Fineman, I will look for your papers
20 the 25th. Ms. Perry, yours on the 1st, and only on the
21 question of the Miranda issue.

22 MS. PERRY: Your Honor, I would like to just, even
23 though I just asked the agent to hand it back to me, to hand
24 back to your Honor and ask your Honor to keep the original
25 because I think it's instructive that Special Agent Joseph --

67BSALEX2

1 there are two different pens which I think is important. One
2 of them is Special Agent Joseph's handwriting which is in one
3 pen and the other is Mr. Alexander and Special Agent Correa is
4 in a different pen, and the second set of initials next to 8:30
5 is in the pen that Mr. Alexander and Special Agent Correa used.
6 That is not clear from the copy so I would like to obviously
7 show the original to Mr. Fineman.

8 MR. FINEMAN: We haven't had testimony about this.

9 MS. PERRY: It's on the document.

10 MR. FINEMAN: I was never provided with the original.

11 MS. PERRY: It's available. I showed it to him.

12 THE COURT: Why don't we do this: Why don't you make
13 a color photocopy.

14 MS. PERRY: They are both in black. It's clearly a
15 different type of pen. Your Honor can take judicial notice
16 it's different or not, but I just wanted your Honor to have the
17 original.

18 THE COURT: I am happy to have the original as long as
19 Mr. Fineman has a chance to take a look at it.

20 MS. PERRY: I provided it to him before giving it to
21 the agent, but Mr. Fineman can look at it now. Perhaps he
22 would even stipulate they are different pens.

23 MR. FINEMAN: I would stipulate they are different
24 pens but I don't know what effect that has about who used it.
25 There is no testimony about who used different pens or if this

67BSALEX2

1 agent used one pen in one opportunity and used a different pen
2 in a different situation. I wouldn't stipulate to anything
3 other than there was two different pens.

4 THE COURT: You have to have evidence to make certain
5 conclusions, don't you?

6 I will hear argument and you can put whatever argument
7 you want.

8 MS. PERRY: We can do that in the papers. The
9 stipulation is simply that the one pen was used to fill in the
10 blanks on the time and date and Special Agent Joseph's name and
11 date, and then another pen was used both by Mr. Alexander and
12 Special Agent Correa and also the initial next to 8:30, and
13 that is the stipulation.

14 THE COURT: Fine. Whatever you want to argue from
15 that you can, and of course Mr. Fineman can tell me why he
16 thinks you are wrong.

17 MR. FINEMAN: Do I have an opportunity to make reply?

18 THE COURT: Sure.

19 MR. FINEMAN: Can I have a week?

20 THE COURT: We will assume given the current schedule
21 your reply comes in the 8th. If Ms. Perry needs more time you
22 get a week from whatever she gets.

23 Ms. Perry, if you want to give me that, is there any
24 other originals you think I need to see?

25 MS. PERRY: No, your Honor.

67BSALEX2

1 THE COURT: Anything else that we need to take up from
2 your standpoint today?

3 MS. PERRY: No, your Honor. As I stated earlier, I
4 think certainly Mr. Fineman's motion is founded in large part,
5 if not in whole, on his piecing together this -- on the Miranda
6 issue without getting into characterizing it, and so depending
7 on your Honor's ruling, it is certainly important I will say to
8 me personally that specific findings be made on the further
9 allegations that I believe are obviously extraordinary and
10 certainly very personally damaging to me and my reputation.
11 Therefore, once the the court has decided the issue I don't
12 know if we are going to be brought back, if there is a written
13 opinion.

14 THE COURT: I intend to write an opinion on this.

15 MS. PERRY: Does your Honor want to be heard on
16 further issues now or should we just wait?

17 THE COURT: That is what I was trying to do this
18 morning. I am happy to hear you on the other issues. I have
19 read the papers as I think you all can tell. I have read the
20 papers very carefully. I am happy to hear you now and if I
21 think I need further argument I am happy to hear you all after
22 I get the written submissions. But regardless of when I hear
23 you all I do intend to issue an opinion and I intend to issue
24 it expeditiously.

25 MS. PERRY: Your Honor, I won't belabor it then. I

67BSALEX2

1 just will say that given that the entirety of this motion
2 obviously there are some questions about my redaction of
3 agents' names and few little other items raised, and I believe
4 each of those are responded to and I don't think they are
5 replied to in the reply brief. But basically the allegations
6 are based upon the allegation that there were no Miranda
7 warnings issued.

8 THE COURT: I think you are being charitable. I
9 think it's not only that there was a Miranda violation here but
10 that the allegations of misconduct predate the alleged Miranda
11 violations and so the theory is that you brought a bad-faith
12 indictment. You were somehow made aware of the Miranda
13 violation that you should have investigated or weren't aware or
14 should have been patently obvious and because you brought a
15 bad-faith indictment you covered this up by covering the
16 agent's names and you conned Mr. Fineman and his client to an
17 innocence proffer and, using the English language, you tricked
18 them into signing what they signed.

19 MS. PERRY: Correct. I believe this is all back
20 pedalling from the fact that Mr. Fineman and his client entered
21 into an innocence proffer with the government and were not
22 pleased with the results of that and all of this is meant to
23 suppress those statements and necessarily, then, the story has
24 to be made about how it was that violations occurred in the
25 first instance. All of this was done I think quite

67BSALEX2

1 precipitously and the fact that there was a referral made at
2 this point, that is really the issue and I think your Honor
3 understands that. That is the issue that the government
4 requests specific factual findings on.

5 THE COURT: I intend to, as I say, issue a thorough
6 written opinion on this.

7 Mr. Fineman, anything you want to say in response to
8 what Ms. Perry said?

9 MR. FINEMAN: No, your Honor.

10 THE COURT: And I thought I made pretty clear that it
11 may be that you may need to be heard from but not for the
12 reasons given originally.

13 I will look forward to the written submissions. If I
14 need further argument I will let you know.

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14	DEFENDANT EXHIBITS	
15	Exhibit No.	Received
16	A	70
17	B	100
18		
19		
20		
21		
22		
23		
24		
25		